DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 60

[No. LS–03–04]

RIN 0581–AC26

Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (Farm Bill) and the 2002 Supplemental Appropriations Act (Appropriations Act) amended the Agricultural Marketing Act of 1946 (Act) to require retailers to notify their customers of the country of origin of covered commodities beginning September 30, 2004. The law also requires the Department of Agriculture (USDA) to issue regulations to implement a mandatory country of origin labeling (COOL) program not later than September 30, 2004. Covered commodities include muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts. This proposed rule contains definitions, the requirements for consumer notification and product marking, and the recordkeeping responsibilities of both retailers and suppliers.

DATES: Comments must be submitted on or before December 29, 2003 to be assured of consideration.

ADDRESSES: Send written comments to: Country of Origin Labeling Program, Room 2092–S; Agricultural Marketing Service (AMS), USDA; STOP 0249; 1400 Independence Avenue, SW.; Washington, DC 20250–0249, or by facsimile to 202/720–3499, or by e-mail to *cool@usda.gov.* State that your comments refer to Docket No. LS–03–04. Comments received will be posted to the AMS Web site at: *http://www.ams.usda.gov/cool/.* Comments sent to the above location that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Keeney, Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by telephone on 202/720–4722, or via e-mail at: *robert.keeney@usda.gov;* or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by telephone on 202/720–5705, or via e-mail at: *william.sessions@usda.gov.*

SUPPLEMENTARY INFORMATION:

Questions and Answers Concerning This Proposed Rule

What Are the General Requirements of Country of Origin Labeling?

The Farm Bill (Public Law 107–171) and the Appropriations Act (Public Law 107–206) amended the Act (7 U.S.C. 1621 *et seq.*) to require retailers to notify their customers of the country of origin of beef (including veal), lamb, pork, fish, perishable agricultural commodities, and peanuts beginning September 30, 2004. The law also requires USDA to issue regulations to implement this program no later than September 30, 2004. The law defines the terms ''retailer'' and ''perishable agricultural commodity'' as having the meanings given those terms in the Perishable Agricultural Commodities Act of 1930 (PACA)(7 U.S.C. 499 *et seq.*). Food service establishments are specifically excluded. In addition, the law specifically outlines the criteria a covered commodity must meet to bear a ''United States country of origin'' label.

Why Can't USDA Track Only Imported Products and Consider All Other Products To Be of ''U.S. Origin?''

The COOL provision of the Farm Bill applies to *all* covered commodities. Moreover, the law specifically identifies the criteria that products of U.S. origin must meet. For beef, pork, and lamb, for example, U.S. origin can only be claimed if derived from animals that are born, raised, and slaughtered in the United States. The law further states that ''*Any* person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity.'' And, the law does not provide authority to control the movement of product, imported or domestic. In fact, the use of a mandatory identification system that would be required to track controlled product through the entire chain of commerce is specifically prohibited.

The Internal Revenue Service Essentially Uses Self-Certification, Backed Up by Selective Audits, for Those of Us Who File Income Taxes. Why Couldn't Self-Certification Work for COOL?

The COOL law requires firms or individuals that supply covered commodities to retailers to provide information indicating the product's country of origin. This information must address the production steps included in the origin claim (*i.e.*, born, raised, and slaughtered or produced). Self-certification documents or affidavits may play a role in assuring that auditable records are available throughout the chain of custody, but the auditable records must themselves also be available to ensure credibility of country of origin labeling claims.

With a Number of Covered Commodities, Particularly Produce Items, Already Labeled as to Country of Origin at Retail, How Big a Burden Will Mandatory Country of Origin Labeling Actually Cause?

It is certainly true that some covered commodities, particularly produce items, are already being labeled as to country of origin at retail establishments. It is also the case that existing Federal law and regulation (*e.g.*, PACA) help ensure the truthfulness of such labels. At the same time, the labeling of such commodities with country of origin information is neither mandatory nor universal at the current time. Thus, while the burden of implementing country of origin labeling for those commodities should be lessened, some additional effort may still be required. For example, suppliers will need to ensure that documentation is complete and properly maintained. Retailers will need to manage their product displays to ensure country of origin information is being properly conveyed to their customers.

Why Can't USDA Use The Same System To Verify Compliance With Country of Origin Labeling That It Uses for Meat Products Under USDA's Commodity Procurement Program?

There are several reasons why the systems must be different. First, the requirements for origin are not the same. The COOL law for U.S. origin requires meat products to be from cattle, hogs, and sheep that are born, raised, and slaughtered in the United States. USDA's commodity procurement program requires meat products to come from U.S.-produced livestock. The definition of U.S.-produced livestock excludes only imported meat and meat

from livestock imported for direct slaughter.

The system for verifying compliance with USDA's commodity procurement program is a ''command and control'' type system. USDA, through various certification or audit programs, confirms the applicable claim at the beginning of the process, then tracks and controls the movement of the product throughout the rest of the marketing chain. A similar system for COOL would require USDA to verify that livestock were born in the United States, then track and control the movement of those livestock and resulting meat products through the marketing chain to retail. However, the COOL law specifically precludes USDA from imposing this type of control.

How Will the Mandatory Country of Origin Labeling Requirements Impact Existing U.S. Cow and Bull Herds?

The law requires country of origin labeling for all covered commodities sold at retail beginning September 30, 2004, and does not contain a grandfathering provision that would exclude meat from these animals from the mandatory labeling requirements. If records as to where these animals were born, raised, and slaughtered do not exist, retailers could not substantiate a country of origin claim that would comply with the law.

Are Cattle, Hogs, and Sheep Covered Commodities?

No. However, the law requires suppliers to provide country of origin information to retailers, including the ''born, raised, and slaughtered'' information required to make U.S. origin claims for the covered commodities beef, pork, and lamb. The records needed to substantiate this information can only be created by persons having first-hand knowledge of the country designation for each production step declared in the country of origin claim. Thus, livestock producers will need to create and/or maintain these records to enable retail suppliers to provide retailers with correct country of origin information.

This proposed rule is issued pursuant to the Farm Bill and the Appropriations Act, which amended the Act.

On October 11, 2002, AMS published Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts (67 FR 63367) providing interested parties with 180 days to comment on the utility of the voluntary guidelines.

On November 21, 2002, AMS published a notice requesting emergency approval of a new information collection (67 FR 70205) providing interested parties with a 60-day period to comment on AMS' burden estimates associated with the recordkeeping requirements as required by the Paperwork Reduction Act of 1995 (PRA).

On January 22, 2003, AMS published a notice extending this comment period (68 FR 3006) an additional 30 days.

In response to these requests for comment, AMS received over 2,400 written comments. In addition, as another means to receive public input with respect to this rulemaking action, AMS held 12 formal educational and listening sessions throughout the United States to afford interested parties the opportunity to provide comments and ideas on the mandatory COOL program's development. Over 3,300 people attended the listening sessions and approximately 580 people provided oral testimony.

AMS has considered all of the comments received to date in developing this proposed rule. Several key concepts have emerged from both the written comments and the public testimony from the listening and educational sessions:

- General opinions of the law (*i.e.*, both pro and con).
- Conflicting testimony regarding the costs that will be incurred by the industry in complying with the law.
- Opinion that the law will improve the food safety of covered commodities.
- Conflicting testimony as to whether there will be improvement in the marketplace because of consumers' willingness to pay for U.S. origin of covered commodities.
- Opinion that poultry will be placed at a competitive advantage because it is exempt from labeling under COOL.
- Opinion that significant pricing disparity will exist between retailers required to label under COOL and those that are exempt such as fish markets and butcher shops.
- Opinion that the law requiring mandatory COOL should be repealed and the program should be made permanently voluntary.
- Opinions that COOL should be implemented immediately due to the Canadian BSE incident.
- Considerable testimony that presumption of U.S. origin should be allowed.
- Considerable testimony that only imported products should be tracked and controlled.
- Considerable testimonies that COOL should be implemented in the least costly manner possible.
- Conflicting testimony on how to interpret the scope of covered commodities.
- Considerable testimony that producers should be allowed to self-certify the origin of their animals.
- Considerable testimony that required recordkeeping should be minimized and should allow for the use of existing records to the maximum extent possible.
- Testimony that this law may violate United States trade obligations under the World Trade Organization.

AMS has accepted many of the commenters' recommendations in developing this proposed rule. However, several of the recommendations provided by the commenters are not in conformance with the law and were therefore not adopted. Further discussion on the key concerns raised by the commenters can be found in each applicable section. AMS has also included a ''Questions and Answers'' section to address a few of the more common questions posed by the commenters.

Background

Section 10816 of Public Law 107–171 (7 U.S.C. 1638–1638d) amended the Act (7 U.S.C. 1621 *et seq.*) to require retailers to inform consumers of the country of origin of covered commodities beginning September 30, 2004.

The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. It is not a food safety or animal health measure. COOL is a retail labeling program and as such does not address food safety or animal health concerns. Food products, both imported and domestic, must meet the food safety standards of FSIS and/or the Food and Drug Administration (FDA), as applicable. In addition, all food products must also meet FDA labeling standards as well as all other applicable FDA regulations and standards.

The law defines the term ''covered commodity'' as muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts. The law defines the terms ''retailer'' and ''perishable agricultural commodity'' as having the meanings given those terms in PACA.

The law specifically outlines the criteria a covered commodity must meet in order to bear a ''United States country of origin'' declaration. In the case of beef, lamb, and pork, the covered

commodity must be derived from an animal that was exclusively born, raised, and slaughtered in the United States. In the case of beef, this definition also includes cattle exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States. In the case of farm-raised fish and shellfish, the covered commodity must be derived from fish or shellfish hatched, raised, harvested, and processed in the United States. In the case of wild fish and shellfish, the covered commodity must be derived from fish or shellfish harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In addition, the law also requires the country of origin declaration to distinguish between wild and farm-raised fish and shellfish. In the case of perishable agricultural commodities and peanuts, the products must be produced in the United States.

To convey the country of origin information, the law states that retailers may use a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. Food service establishments, such as restaurants, cafeterias, food stands, and other similar facilities are exempt from these labeling requirements.

The law makes reference to the definition of ''retailer'' in PACA as the meaning of ''retailer'' for the application of the labeling requirements under the COOL law. Under PACA, a retailer is any person who is a dealer engaged in the business of selling any perishable agricultural commodity solely at retail when the invoice cost of all purchases of produce exceeds $230,000 during a calendar year. This definition excludes butcher shops, fish markets, and small grocery stores that either sell fruits and vegetables at a level below this dollar volume threshold or do not sell any fruits and vegetables at all.

The law requires any person engaged in the business of supplying a covered commodity to a retailer to provide the retailer with the product's country of origin information. In addition, the law states the Secretary of Agriculture (Secretary) may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail. The law prohibits the Secretary from using a mandatory identification system to verify the country of origin of a covered commodity and provides examples of existing certification programs that may be used to certify the country of origin of a covered commodity. The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to $10,000 for each violation. The law also encourages the Secretary to enter into partnerships with States with enforcement infrastructure to the extent possible to assist in the program's administration.

Key Components of the Law

Defining Covered Commodities

The law defines the term ''covered commodity'' as: Muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; and peanuts.

Exclusion for Ingredient in a Processed Food Item

The law excludes items from needing to bear a country of origin declaration when a covered commodity is an ''ingredient in a processed food item.'' However, Public Law 107–171 does not define a ''processed food item.'' Therefore, AMS must define what constitutes a ''processed food item'' for each covered commodity in the context of Public Law 107–171 for the purposes of this proposed regulation.

In defining ''processed food item'' in the voluntary guidelines (67 FR 63367), AMS recognized that the term ''processed'' has been previously defined in other regulations promulgated by AMS, such as those issued in conjunction with the National Organic Program. AMS also stated that it did not believe that these definitions were suitable for use in the COOL program because using such a broad definition would exempt commodities that Congress clearly intended to be governed under this law.

AMS received numerous comments relating to the definition of a ''processed food item.'' Many commenters suggested that the definition of processed food item published in the voluntary guidelines (67 FR 63367) resulted in significantly reducing the number of food items Congress intended to be covered by the Act. These commenters contend, for example, that a roast remains a muscle cut of beef even if cooked, salted, or flavored.

Conversely, many other commenters suggested that the definition published in the voluntary guidelines (67 FR 63367) was too narrow and resulted in the inclusion of products that Congress did not intend to be covered by the Act. These commenters contend that any item bearing an ingredient statement should not be required to be labeled under COOL.

As this is a retail labeling law, to help guide AMS in determining how to define a ''processed food item,'' AMS viewed the scope of covered commodities in the context of how these products are marketed at the retail level. For example, most peanuts sold at retail are shelled and roasted. To interpret the law as only applying to green peanuts would result in the exclusion of most peanuts sold at retail. Similarly, to exclude canned fish would result in the exclusion of a large share of the fish products sold at retail.

To address the concerns raised by the commenters, AMS has chosen to define a ''processed food item'' utilizing a 2-step approach. First, a retail item derived from a covered commodity that has undergone a physical or chemical change, causing the character to be different from that of the covered commodity is deemed to be a processed food item. Examples include oranges that have been squeezed and made into orange juice, a fresh leg of pork that has been cured and made into a ham, peanuts that have been ground and made into peanut butter, or flesh of a fish that has been restructured and made into a fish stick. These retail items have undergone a physical or chemical change such that they no longer retain the characteristics of the covered commodity and thus consumers would not use the items in the same manner as they would the covered commodities. Second, a retail item derived from a covered commodity that has been combined with either (1) other covered commodities, or (2) other substantive food components (*e.g.*, chocolate, stuffing) resulting in a distinct retail item that is no longer marketed as a covered commodity. Examples include a salad mix that contains lettuce and tomatoes, peanuts in a candy bar, a stuffed pork chop, or seafood medley.

Alternatively, some commenters suggested that a processed food item could be defined as to exclude any product that bears an ingredient statement. These commenters contend that this would establish a bright line standard that would enable companies throughout the marketing chain to readily determine whether the commodities they produce or sell would be covered commodities. Utilizing such a definition would result in the exclusion of many products, including those products in which the ingredient statement lists only the commodity itself. Accordingly, AMS invites further

comment on the practicality of this alternative definition.

Similarly, some commenters suggested that any covered commodity that has undergone processing as defined by other existing Federal regulations (*e.g.*, PACA, National Organic Program, and AMS Processed Fruit and Vegetable Inspection Program) should be defined as an ingredient in a processed food item, thereby being excluded from country of origin labeling under this law. Under this alternative any food item that represents additional transformation (*e.g.*, canning, cooking, dehydration, drying, fermentation, milling, the addition of chemical substances, etc.) of a covered commodity would be considered a processed food item. In addition, a covered commodity that has been combined with other covered commodities or other ingredients would also be considered an ingredient in a processed food item and excluded from labeling. Utilizing such a definition could result in the exclusion of many retail products. Accordingly, AMS invites further comment on the practicality of this alternative definition.

As another alternative, some commenters suggested that a covered commodity that is further processed (*i.e.*, cured, restructured, etc.) should not be excluded unless the covered commodity is mixed with other commodities to create a distinct food item such as a pizza or TV dinner. Accordingly, AMS also invites further comment on the practicality of this alternative definition.

AMS invites further comment on its preferred approach, the three identified alternatives, or any other alternative to the statutory exclusion for an ingredient in a processed food item.

Muscle Cuts of Beef, Lamb, and Pork

All muscle cuts of beef (including veal), lamb, and pork whether chilled, frozen, raw, cooked, seasoned, or breaded are covered commodities and would be subject to these regulations unless they are an ingredient in a processed food item.

In cases where a retail item is derived from a muscle cut of beef, lamb, or pork that has undergone a physical or chemical change, causing the character to be different than that of the covered commodity, that item is considered a processed food item and would be excluded from needing to bear a country of origin declaration under these regulations. For example, products such as restructured steaks and cured products like hams, corned beef briskets, and bacon would be considered processed food items as they no longer retain the characteristics of the covered commodity and thus consumers would not use them in the same manner as they would the covered commodity. A consumer who desires a fresh pork leg for roasting would not substitute a cured product such as ham for the same purpose. In addition, these products also are not typically marketed with muscle meats at a retail establishment, but are generally marketed with other excluded meat products.

In cases where a retail item is derived from a covered commodity that has been combined with non-substantive components, and the character of the covered commodity is retained, the resulting product would not be considered a processed food item and would be subject to these regulations. Examples include products such as needle-tenderized steaks; fully-cooked entrees containing beef pot roast with gravy; seasoned, vacuum-packaged pork loins; and water-enhanced case ready steaks, chops, and roasts. These items would not be considered processed food items because the combination of non-substantive components and a muscle cut of beef, lamb, or pork does not result in a retail item with characteristics that are different from that of the covered commodity and would generally be used by consumers in the same manner.

In cases where a retail item consists of a muscle cut of beef, lamb, and pork and another covered commodity or other substantive food components resulting in a distinct retail item that is no longer marketed as a covered commodity, such an item is considered a processed food item and would be excluded from these regulations. An example includes an item such as a shish kabob containing beef and lamb, which would not be marketed as a muscle cut of beef or lamb, but would instead be marketed as a shish kabob.

Ground Beef, Lamb, and Pork

Under the law, ground beef, ground lamb, and ground pork are required to bear a country of origin declaration. FSIS rules and regulations specifically define the requirements for products to be labeled as ''ground beef,'' ''ground pork,'' and ''ground lamb.'' As such, only those products that meet FSIS requirements to be labeled as ''ground beef,'' ''ground pork,'' or ''ground lamb,'' must bear a country of origin declaration in accordance with this proposed rule.

Fresh and Frozen Fruits and Vegetables

Under the law, perishable agricultural commodities as defined by PACA are required to bear a country of origin declaration. PACA defines perishable agricultural commodities as ''any of the following, whether or not frozen or packed in ice: Fresh fruits and vegetables of every kind and character; and * * * includes cherries in brine as defined by the Secretary in accordance with trade usages.'' Therefore, frozen fruits and vegetables (*e.g.*, a package of frozen strawberries or frozen french fried potatoes made from sliced potatoes) would be covered commodities subject to these regulations; however, cooked and canned fruits and vegetables would be exempt.

In order to maintain consistency with PACA, a frozen fruit or vegetable would be a covered commodity as long as it is not an ingredient in a processed food item and thus its ''kind or character'' has not been altered. For example, a retail item derived from a perishable agricultural commodity that has undergone a physical or chemical change, causing the character to be different from that of the covered commodity, is considered to be a processed food item and would be excluded from these regulations. For example, oranges that have been squeezed and made into orange juice or apples that have been mashed and made into fresh apple sauce would be considered processed food items as they no longer retain the characteristics of the covered commodity and thus consumers would not use them in the same manner as they would the covered commodity.

In cases where a retail item is derived from a perishable agricultural commodity combined with non-substantive components and the character of the covered commodity is retained, the resulting product is not considered a processed food item and would be subject to these regulations. Examples include products such as strawberries packaged with sugar, a preservative, or other flavoring. These items would not be considered processed food items because the addition of non-substantive components does not result in a retail item with characteristics that are different from that of the covered commodity and would generally be used by consumers in the same manner as the covered commodity.

In cases where a retail item is derived from a perishable agricultural commodity that has been combined with another covered commodity or other substantive food components resulting in a distinct retail item that is not marketed as a covered commodity, such an item is considered a processed food item and would be excluded from

these regulations. Examples include a frozen prepared pie that includes frozen sliced apples, a fruit cup containing cantaloupe, honeydew, and watermelon, or a vegetable tray containing both carrots and celery.

Peanuts

All peanuts, whether raw, roasted, in-shell, shelled, salted, seasoned, or canned are subject to these regulations unless they are an ingredient in a processed food item. Under the law, the term ''covered commodity'' includes ''peanuts.'' Because the vast majority of peanuts sold at retail are shelled, roasted, and salted, AMS believes these products were intended to be covered by the law. Accordingly, shelled and/or roasted peanuts would be subject to these regulations as these retail items do not have characteristics that are different from that of a covered commodity. Further, peanuts that have been combined with other non-substantive ingredients such as oil, salt, or other flavorings would also be subject to these regulations. However, peanut products such as candy coated peanuts, peanut brittle, and peanut butter would not be subject these regulations as they are processed food items with a character that is different than that of the covered commodity. In addition, in cases where the peanuts are ingredients in other food products (*e.g.*, peanuts in a candy bar), they would also be excluded from these regulations as they are not marketed as a covered commodity.

Wild and Farm-Raised Fish and Shellfish

All fish and shellfish, whether chilled, frozen, raw, cooked, breaded, or canned would be subject to these regulations unless they are an ingredient in a processed food item. This includes fillets, steaks, nuggets, and other flesh from wild or farm-raised fish and shellfish.

In cases where a retail item is derived from fish or shellfish that has undergone a physical or chemical change, causing the character to be different than that of the covered commodity, that item is considered a processed food item and would be excluded from these regulations. For example, items such as restructured shrimp or fish sticks and smoked and cured products would be considered processed food items because they no longer retain the characteristics of the covered commodity and thus consumers would not use them in the same manner as they would the covered commodity.

In cases where a retail item is derived from a fish or shellfish that has been combined with non-substantive ingredients such as seasonings, preservatives, or breading, that item would not be considered a processed food item as it does not result in a retail item with characteristics that are different from that of the covered commodity and would generally be used by consumers in the same manner as the covered commodity.

In cases where a retail item is derived from a fish or shellfish that has been combined with another covered commodity or other substantive ingredients, that item would be considered a processed food item and would not be subject to these regulations as it results in a distinct retail item that is no longer marketed as a covered commodity. Examples include a bag of seafood medley, stuffed salmon, or surimi.

Labeling Country of Origin for Products Produced Exclusively in the United States

The law prescribes specific criteria that must be met for a covered commodity to bear a ''United States country of origin'' declaration. The specific requirements for each commodity are as follows:

(a) Beef—covered commodities must be derived exclusively from an animal that was born, raised, and slaughtered in the United States (including from an animal exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

(b) Lamb and Pork—covered commodities must be derived exclusively from an animal that was born, raised, and slaughtered in the United States.

(c) Farm-raised Fish and Shellfish—covered commodities must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States.

(d) Wild Fish and Shellfish—covered commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

(e) Fresh and Frozen Fruits and Vegetables, and Peanuts—covered commodities must be derived exclusively from perishable agricultural commodities or peanuts grown in the United States.

Products otherwise meeting the requirements of ''United States country of origin'' may retain that designation after export for further processing in a foreign country and reentry into the United States for retail sale provided a verifiable recordkeeping audit trail is maintained. However, in the case of meat and meat products, additional labeling information may be required by other Federal agencies.

Labeling Country of Origin for Imported Products (i.e., Produced Entirely Outside of the United States)

Currently, under the Tariff Act of 1930, as amended (19 U.S.C. 1304)(Tariff Act), most imported items, including food items, are required to be marked to indicate the ''country of origin'' to the ''ultimate purchaser.'' The U.S. Bureau of Customs and Border Protection (CBP), which administers the Tariff Act, generally defines ''ultimate purchaser'' as the last person in the United States who will receive the article in the form in which it was imported and defines ''country of origin'' as the country of manufacture, production, or growth of any article of foreign origin entering the United States.

For example, under the Tariff Act, containers (*e.g.*, cartons and boxes) holding imported fresh fruits and vegetables must bear a country of origin declaration (as defined by current CBP regulations) when entering the United States. However, under current law, a retailer may remove loose produce from a labeled container and display it in an open bin, selling each individual piece of produce without a country of origin declaration. In contrast, this proposed rule would require the retailer to notify the consumer as to the country of origin of all covered commodities whether individually packaged or displayed in a bin.

Currently, under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), all meat products imported into the United States are required to bear the country of origin on the labeling of the container in which the products are shipped. If imported meat or meat products are intended to be sold intact to a grocer or household consumer (*i.e.*, consumer-ready packaging), the country of origin is conveyed to those recipients. For example, if a bulk shipping container imported from country X, consists of pre-packaged and labeled meat cuts that are intended to be sold to grocers or at retail to household consumers as they are packaged, each package would bear a country of origin declaration (*e.g.*, product of country X).

Currently, under the Tariff Act, if an article is destined for a U.S. processor or manufacturer in which it will undergo ''substantial transformation,'' that processor or manufacturer is generally considered the ''ultimate

purchaser.'' As such, products that have been substantially transformed by a U.S. processor generally are not required to bear a country of origin declaration. Similarly, under current FSIS policies and directives, imported meat and meat products that are further processed in the United States are not required to bear country of origin declarations on the newly produced products or subsequent products made from them as these products are now considered to be domestic.

Under this proposed rule, imported covered commodities for which origin has already been established as defined by this regulation (*e.g.*, born, raised, and slaughtered in the case of meat products or grown in the case of peanuts), shall retain their origin, as determined by CBP at the time the product entered the United States, through retail sale. For example, if an imported lamb carcass derived from an animal that was born, raised, and slaughtered in country X, was further processed in the United States, the resulting products derived from that carcass would be labeled as ''product of the country X.'' However, in this example, additional labeling information may be required by FSIS.

Products imported in consumer-ready packages, including food products (*e.g.*, frozen green beans or canned ham), are currently required to bear a country of origin declaration on each individual package under both the Tariff Act and FMIA. This proposed rule would not change these requirements.

Labeling Country of Origin When the Product Has Entered the United States During the Production Process (i.e., Mixed Origin That Includes the United States)

The law specifically defines the requirements for covered commodities to bear a ''United States country of origin'' declaration. However, the law is less specific for products produced completely or in part outside of the United States. In these instances, the law requires only that retailers inform consumers as to the country of origin of a covered commodity at the final point of sale.

Beef, Lamb, and Pork

The law states that only covered commodities derived from animals that were born, raised, and slaughtered in the United States may bear a ''United States country of origin'' declaration. AMS recognizes that a number of animals born in foreign countries are raised and slaughtered in the United States. In addition, some animals born in the United States are raised in foreign countries and then either slaughtered in that foreign country or returned to the United States for slaughter.

The requirements for products to bear a ''Product of the United States'' declaration do not permit products derived from animals that were born, raised, or slaughtered in a foreign country to be labeled as ''Product of the United States.'' However, AMS recognizes that to label products of an animal that was only born in country X, but raised and slaughtered in the United States solely as ''Product of country X'' does not reference the significant production steps that occurred in the United States. Therefore, under this proposed rule, products that were produced in both a foreign country and the United States would be labeled at retail as being imported from the foreign country and also for the production steps that occurred in the United States. For example, pork products derived from a pig that was born in country X, raised and slaughtered in the United States would be labeled as ''Imported from country X, Raised and Slaughtered in the United States.'' Alternatively, products may also be labeled to specifically identify the production step(s) that occurred in the country other than the United States if the animal's identity was maintained along with records to substantiate the origin claims. For example, products derived from a pig that was born and raised in country X and slaughtered in the United States could either be labeled as ''Imported from country X, Slaughtered in the United States'' or ''Born and Raised in country X, Slaughtered in the United States.'' AMS invites further comment on the use of alternative terms for the term ''slaughtered.''

AMS also recognizes that in some cases, an animal will undergo production steps in two or more foreign countries prior to entering the United States for additional processing or a final process such as slaughter. In these cases, the meat products derived from an animal that was born in country X, raised in country Y, and slaughtered in the United States would be labeled at retail as being imported from country Y and for any production steps occurring in the United States. For example, if a calf was born in country X and raised in country Y before being imported for slaughter in the United States, the resulting meat products derived from this animal would be labeled as ''Imported from country Y, Slaughtered in the United States.'' Alternatively, if the animal's identity was maintained along with the records to substantiate the origin claims, the product could be labeled to specifically identify the production step(s) (*e.g.*, born, raised) occurring in the country(ies) other than the United States. In the example cited above, the product could be labeled ''Born in country X, Raised in country Y, Slaughtered in the United States.''

AMS invites further comment on this approach to the labeling of beef, lamb and pork, and requests identification of alternative approaches to labeling such products.

Wild and Farm-Raised Fish and Shellfish

In the case of wild fish and shellfish, the law states that a covered commodity can only bear a ''United States country of origin'' declaration if it is harvested in the waters of the United States or aboard a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In the case of farm-raised fish and shellfish, the law states that a covered commodity can only be labeled as ''Product of the U.S.'' if it is hatched, raised, harvested, and processed in the United States. However, the law does not define the term processed.

AMS received numerous comments requesting that the regulations for the mandatory COOL program conform to existing regulations of CBP wherever possible to eliminate redundancies, costs, and conflicts. As such, for wild and farm-raised fish and shellfish, AMS has defined ''processed'' as any process that effects substantial transformation as defined by CBP Rules of Origin.

In the case of wild fish and shellfish, if a covered commodity was harvested in the waters of the U.S. or by a U.S. flagged vessel and processed in country X or aboard a country X flagged vessel, the covered commodity shall be labeled at retail as ''Product of country X.'' For example, if a fish was caught in U.S. waters and processed into individually quick-frozen fillets in country Y, such product would be labeled as ''Product of country Y'' because it has been substantially transformed as defined by CBP and thus does not meet the requirements to bear a U.S. origin declaration. Alternatively, the product may also be labeled to include the production step occurring in the United States if the product's identity was maintained along with records to substantiate the origin claims. In the example provided above, the product could be labeled as ''product of country Y, harvested in the United States.''

If a covered commodity was harvested in country Y and processed in the United States or aboard a U.S. flagged vessel, the product shall be labeled at retail as ''Imported from country Y, processed in the United States.'' In all cases, the covered commodity must also

be labeled to indicate that it was derived from wild fish and/or shellfish.

In the case of farm-raised fish, if a covered commodity was hatched in country X, and raised, harvested and/or processed in the United States, the product would be labeled as being imported from country X and for the production step(s) occurring in the United States. For example, if a fish was hatched in country X and processed in the United States, the product would be labeled as ''Imported from country X, Processed in the United States.''

If a covered commodity was hatched, raised, and harvested in the United States and processed in country X, the product shall be labeled at retail as ''Product of country X.'' Alternatively, the product may also be labeled to include the production step(s) occurring in the United States if the product's identity was maintained along with records to substantiate the origin claims. In the example given above, the product could be labeled as ''Product of country X, hatched, raised, and harvested in the United States.'' In all cases, the covered commodity must also be labeled to indicate that it was derived from farm-raised fish and/or shellfish. Farm-raised fish means fish or shellfish that have been harvested in controlled or selected environments, including ocean-ranched (*e.g.*, penned) fish and shellfish confined in managed beds; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish. For example, mussels on rope culture and oysters on leased land would be considered farm-raised.

AMS invites further comment on this approach to the labeling of wild and farm-raised fish and shellfish and requests identification of alternative approaches to labeling such products.

Defining Country of Origin for Blended Products

Many of the covered commodities required to bear a country of origin declaration under the law are commingled or blended products that were prepared from raw material sources having different origins (*e.g.*, bagged lettuce, ground beef, shrimp, etc.). However, the law does not specify how these products should be labeled.

In defining country of origin for blended or mixed products in the voluntary guidelines (67 FR 63367), AMS recognized that it could be misleading to consumers if only a small percentage of a covered commodity mixture met the definition of United States origin and yet the mixture could list the United States first ahead of other countries in the country of origin declaration on the package. As such, under the voluntary guidelines, the country of origin declaration was to reflect the country of origin for each raw material source of the mixed or blended retail item by order of predominance by weight. In addition, under the voluntary guidelines, containers of mixed or blended products in which the individual constituents could be separately identified, would have to bear a country of origin declaration individually identifying the country of origin of each constituent.

AMS received numerous comments on this issue stating that to require labeling in the order of predominance by weight and for each individual constituent would be cumbersome, impractical, and costly.

In response to these comments, under this proposed rule, the country of origin declaration of blended or mixed retail food items comprised of the same covered commodity (*e.g.*, bag of lettuce or package of ground beef) that are prepared from raw material sources having different origins must list alphabetically the countries of origin for all of the raw materials contained therein. For example, a bag of red and green leaf lettuce from country A and country B would be labeled as ''Product of country A, Product of country B.'' However, under this proposed rule, items such as a salad mix or a fruit cup would not be required to bear a country of origin declaration because these items would be considered processed food items and would be excluded from these regulations.

Method of Notification

The law states that the country of origin declaration may be provided to consumers by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers.

Under this proposed rule, market participants can utilize a variety of different labeling nomenclatures to denote the country of origin of a covered commodity. For example, ''U.K.'' and ''United Kingdom of Great Britain and Northern Ireland'' would both be allowed under this proposed rule.

AMS received numerous comments requesting acceptance for labels containing only the name of the country such as ''USA'' due to the limited amount of space on many retail items. Therefore, under this proposed rule, country of origin declarations may be in the form of a statement such as ''Product of USA,'' ''Grown in Mexico,'' or they may only contain the name of the country such as ''USA'' or ''Mexico'' provided it is in conformance with other existing Federal laws. However, the labeling requirements under this proposed rule do not supercede any existing labeling requirements, unless otherwise specified, and any such country of origin notification must not obscure other labeling information required by existing regulatory requirements.

For those entities that are regulated by FSIS, all country of origin labels must be submitted to FSIS for pre-approval as required by current FSIS regulations.

In order to provide the industry with as much flexibility as possible, this proposed rule does not contain specific requirements as to the exact placement or size of the country of origin declaration. However, such declaration must be conspicuous and allow consumers to determine the country of origin when making their purchases and provided that existing Federal labeling requirements must be followed.

State and Regional Labeling Programs

The law requires retailers to notify consumers of the country of origin of covered commodities. Therefore, State and regional labeling programs such as ''Washington apples,'' ''Idaho potatoes,'' and ''California Grown'' do not meet this requirement and cannot be accepted in lieu of country of origin labeling.

Existing State-Level Country of Origin Labeling Laws

Several States have implemented mandatory programs for country of origin labeling of certain commodities. For example, Alabama, Arkansas, Mississippi, and Louisiana have origin labeling requirements for certain seafood products. Other States including Wyoming, Idaho, North Dakota, South Dakota, Louisiana, Kansas, and Mississippi have origin labeling requirements for particular meat products. In addition, the State of Florida and the State of Maine have origin labeling requirements for fresh produce items.

AMS received several comments asserting that these State programs, particularly the State of Florida's program, should serve as models for the Federal mandatory COOL program. AMS has reviewed these existing programs and concluded that most of these programs do not meet the requirements of the Act. Accordingly, AMS has determined that, in general, these programs are not suitable models on which to base the regulations for the Federal mandatory COOL program.

With regard to enforcement activities, while some of these States actively enforce their respective origin labeling

laws and impose fines on those found to be in violation and/or seize product found to be mislabeled, other States conduct no such enforcement activities. With respect to the Florida law that is actively enforced by the State, verification of a product's origin generally consists of the inspector observing the primary container the product was packaged in to determine if the retailer has accurately characterized the origin of the product on the shelf. This enforcement program is based on a presumption of truthfulness that allows the retailer to rely on the information printed either on the shipping container or on the product itself. Therefore, AMS does not believe this type of enforcement program could serve as a model for enforcement of the Federal program.

Remotely Purchased Products

Many consumers are now purchasing products from retailers prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, etc.). In the voluntary guidelines (67 FR 63367), AMS stated its belief that consumers should be made aware of the country of origin of a covered commodity before the purchase is made. Thus, under the voluntary guidelines retailers were required to provide the country of origin information on the sales vehicle (*i.e.*, Internet site, home delivery catalog, etc.) as part of the information describing the covered commodity for sale.

Numerous commenters stated that it would be nearly impossible and extremely impractical to have current country of origin information on an Internet site or catalog as this information changes rapidly depending on the store location or warehouse at which an order is processed and filled. Therefore, under this proposed rule, retailers must provide notification of country of origin at the time the product is delivered to the customer.

Recordkeeping Requirements

The law states that the Secretary may require any person that prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance. As such, records and other documentary evidence to substantiate origin declarations and, if applicable, designations of wild or farm-raised, are necessary in order to provide retailers with credible information on which to base origin declarations.

Under this proposed rule, any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (*i.e.*, distributors, handlers, etc.), would be required to maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction, for a period of 2 years from the date of the transaction. The supplier of a covered commodity that is responsible for initiating a country of origin declaration and, if applicable, designation of wild or farm-raised, must possess or have legal access to records that substantiate that claim. For an imported covered commodity, the importer of record as determined by CBP, must ensure that records: (1) Provide clear product tracking from the U.S. port of entry to the immediate subsequent recipient, and (2) substantiate country of origin claims, and, if applicable, designations of wild or farm-raised and maintain such records for a period of 2 years from the date of the transaction. To the extent that existing records contain the necessary information to substantiate an origin declaration and, if applicable, designations of wild or farm-raised, it is not necessary to create or maintain additional records.

AMS invites comment on all aspects of recordkeeping requirements. In particular, comment is invited on whether a shorter record retention requirement would still afford adequate time to conduct compliance activities. For example, FDA proposed a 1-year record retention requirement for perishable goods in their proposed rule, published on May 9, 2003, implementing sections of the Bioterrorism Act of 2002, and many firms would have to retain records for both this rulemaking and the FDA recordkeeping rule. At the same time, retailers and others in the marketing chain subject to PACA must continue to comply with its 2 year record retention requirement.

For suppliers that handle similar covered commodities from more than one country, the supplier must be able to document that the origin of a product was separately tracked, while in their control, during any production or packaging processes to demonstrate that the identity of the product was maintained.

Under this proposed rule, retailers also have recordkeeping responsibilities. AMS received numerous comments requesting clarification of the types of records that must be kept at the retail level. Many of these commenters also suggested that a 2-year requirement for maintaining records at the store level was too onerous and unnecessary given the relatively short amount of time a product is on the shelf before it is sold. Therefore, under this proposed rule, records and other documentary evidence relied upon at the point of sale by the retailer to establish a product's country of origin and, if applicable, designation of wild or farm-raised, must be maintained at the point of sale or otherwise be reasonably available to any duly authorized representatives of USDA for at least 7 days following the retail sale of the product. Records that identify the retail supplier, the product unique to that transaction, and the country of origin information, and, if applicable, designation of wild or farm-raised, must be maintained for a period of 2 years from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, warehouse, central offices, or other off-site location.

AMS invites comment on all aspects of recordkeeping requirements. In particular, comment is invited on whether a shorter record retention requirement would still afford adequate time to conduct compliance activities. For example, FDA proposed a 1-year record retention requirement for perishable goods in their proposed rule, published on May 9, 2003, implementing sections of the Bioterrorism Act of 2002, and many firms would have to retain records for both this rulemaking and the FDA recordkeeping rule. At the same time, retailers and others in the marketing chain subject to PACA must continue to comply with its 2 year record retention requirement.

AMS also received numerous comments from retailers emphasizing the need to hold retail suppliers accountable as the retailer would be unable to determine a product's country of origin in the absence of credible information from the supplier. Under the statute, suppliers of covered commodities are required to supply country of origin information to retailers and sanctions may be assessed against retailers only for willful violations.

However, to help address the concerns of retailers, AMS invites further comment on the practicality of requiring suppliers to provide an affidavit for each transaction to the immediate subsequent recipient certifying that the country of origin claims and, if applicable, designations of wild or farm-raised, being made are truthful and that the required records are being maintained.

Enforcement

The law encourages the Secretary to enter into partnerships with States to the extent practicable to assist in the administration of this program. As such, USDA will seek to enter into partnerships with States that have enforcement infrastructure to conduct retail compliance reviews.

Routine compliance reviews may be conducted at retail establishments and associated administrative offices, and suppliers subject to these regulations. USDA would coordinate the scheduling and determine the procedures for reviews. Only USDA will be able to initiate enforcement actions against a person found to be in violation of the law. USDA may also conduct investigations of complaints made by any person alleging violations of these regulations when the Secretary determines that reasonable grounds for such investigation exist.

Retailers, upon being notified of the commencement of a compliance review, must make all records or other documentary evidence material to this review available to USDA representatives and provide any necessary facilities for such inspections.

AMS invites further comment on all aspects of enforcement of this retail labeling rule. Specific comment is requested on the implications of the statutory mandate for retail labeling beginning September 30, 2004, relative to the amount of lead time necessary for firms in the supply chain to comply with this rule.

Violations

The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to $10,000 for each violation. For retailers, the law states that if the Secretary determines that a retailer is in violation of the Act, the Secretary must notify the retailer of the determination and provide the retailer with a 30-day period during which the retailer may take necessary steps to comply. If upon completion of the 30-day period the Secretary determines the retailer has willfully violated the Act, after providing notice and an opportunity for a hearing, the retailer may be fined not more than $10,000 for each violation.

AMS received numerous comments requesting a clarification as to how AMS will apply the standard of willfulness. These commenters urge USDA to recognize that if a majority of covered commodity items bear a label indicating the product's country of origin, the retailer has met their obligation under these regulations. AMS recognizes that many suppliers, particularly in the case of produce, will apply stickers to individual covered commodities indicating the country of origin and that such labeling technology does not result in a 100 percent adhesion level. AMS also recognizes that consumers may separate hands of bananas that may only have one or two stickers per hand or otherwise move an item from one bin to another as they make their selections. AMS will take these and all other circumstances into account in determining whether or not a retailer has committed a willful violation.

In addition to the enforcement provisions contained in the Act, statements regarding a product's origin must also comply with other existing Federal statutes. For example, if a firm misrepresents the State, country, or region of origin of a perishable agricultural commodity, the firm is in violation of PACA. In addition, both FMIA and the Federal Food, Drug, and Cosmetic Act prohibit labeling that is false or misleading. Thus, inaccurate country of origin labeling of covered commodities may lead to additional penalties under these statutes as well.

Executive Order 12988

The contents of this proposed rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted from creating or operating country of origin labeling programs for the commodities specified in the Act and these regulations. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. Further, the Act does not restrict or modify the authority of the Secretary to administer or enforce FMIA (21 U.S.C. 601 *et seq.*) or PACA (7 U.S.C. 499 *et seq.*). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

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

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. This proposed rule is required by the Farm Bill. While this statute does not contain an express preemption provision, it is clear from the language in the statute that Congress intended preemption of State law.

Several States have implemented mandatory programs for country of origin labeling of certain commodities. For example, Alabama, Arkansas, Mississippi, and Louisiana have origin labeling requirements for certain seafood products. Other States including Wyoming, Idaho, North Dakota, South Dakota, Louisiana, Kansas, and Mississippi have origin labeling requirements for certain meat products. In addition, the State of Florida and the State of Maine have origin labeling requirements for fresh produce items.

To the extent that these State country of origin labeling programs encompass commodities which are not governed by this regulation, the States may continue to operate them. With regard to consultation with States, as directed by the law, AMS has consulted with the States that have country of origin labeling programs. Further, State officials were invited to attend, and in many cases did participate in, the 12 educational and listening sessions AMS held across the United States. Further, States are expressly invited to comment on this proposed rule as it relates to existing State programs.

Executive Order 12866

USDA has examined the economic impact of this proposed rule as required by Executive Order 12866. USDA has determined that this regulatory action is economically significant, as it is likely to result in a rule that would have an annual effect on the economy of $100 million or more and therefore has been reviewed by OMB. Executive Order

12866 requires that a regulatory cost-benefit assessment be performed on all economically significant regulatory actions. In accordance with Executive Order 12866, this preliminary economic impact assessment contains a statement of need for the proposed rule, an examination of alternative approaches, and an analysis of benefits and costs.

Summary of the Economic Analysis

The estimated benefits associated with this rule are likely to be negligible. The estimated first-year incremental cost for growers, producers, processors, wholesalers, and retailers ranges from $582 million to $3.9 billion. The estimated cost to the U.S. economy in higher food prices and reduced food production in the tenth year after implementation of the rule ranges from $138 million to $596 million.

Note that this analysis does not quantify certain costs of the proposed rule such as the cost of the rule after the first year, or the cost of any supply disruptions or any other ''lead-time'' issues. Except for the recordkeeping requirements, there is insufficient information to distinguish between first year start up and maintenance costs versus ongoing maintenance costs for this proposed rule. Maintenance costs beyond the first year are expected to be lower than the combined start up and maintenance costs required in the first year. AMS invites further comment on start up costs and maintenance costs for the first year and beyond for firms directly affected by this proposed rule.

USDA finds little evidence that consumers are willing to pay a price premium for country of origin labeling. USDA also finds little evidence that consumers are likely to increase their purchase of food items bearing the U.S. origin label as a result of this rulemaking. Current evidence does not suggest that U.S. producers will receive sufficiently higher prices for U.S.-labeled products to cover the labeling, recordkeeping, and other related costs. The lack of participation in voluntary programs for labeling products of U.S. origin provides evidence that consumers do not have a strong preference for country of origin.

Statement of Need

This proposed rule is the direct result of statutory obligations to implement the COOL provisions of the Farm Bill, which amended the Act by adding Subtitle D—Country of Origin Labeling. There are no alternatives to Federal regulatory intervention for implementing this statutory directive.

The country of origin labeling provisions of the Farm Bill change current Federal labeling requirements for muscle cuts of beef, pork, and lamb; ground beef, ground pork, and ground lamb; farm-raised fish; wild fish; perishable agricultural commodities; and peanuts (hereafter, covered commodities). Under current Federal laws and regulations, country of origin labeling is not universally required for covered commodities. In particular, labeling of U.S. origin is not mandatory, and labeling of imported products at the consumer level is required only in certain circumstances.

The Tariff Act, FMIA, and other legislation require most imports to bear labels informing the ''ultimate purchaser'' of the country of origin. ''Ultimate purchaser'' is defined as the last U.S. person who will receive the article in the form in which it was imported. The Tariff Act requires country of origin declarations on containers (*e.g.*, cartons and boxes) holding imported fresh fruits and vegetables when entering the United States. Under the provisions of this statute, loose produce in a labeled container can be displayed and sold in an open bin at retail outlets without country of origin labels on each individual piece of produce. A placard or other bin label indicating country of origin is not required. If the produce in a shipping container is packed in consumer-ready packaging, however, those packages must bear a country of origin declaration. For example, grapes packaged in bags or shrink-wrapped English cucumbers must have country of origin labels on each consumer-ready package. Further, if the food item is destined for a U.S. processor or manufacturer where it will undergo ''substantial transformation,'' that processor or manufacturer is considered the ultimate purchaser. As a result, under the Tariff Act, these covered commodities are not required to carry a country of origin mark after processing in the United States.

The strongest case for establishing a market failure justification for mandatory COOL is inadequate or asymmetric information. Country of origin is clearly a credence attribute, which means that consumers cannot observe the attribute before or after purchasing the product. Without labeling, there is no way for consumers to know the country of origin of a covered commodity. If the country of origin of the commodities covered by this proposed rule is an attribute desired by consumers and there is market failure that impedes the voluntary provision of this information, then market efficiency could be improved by providing credible information to consumers. With credible country of origin information, consumers could select products based on their preferences for country of origin, and the food industry could respond to consumer demand signals by providing products according to the expressed demands of consumers.

Consumer surveys indicate that some consumers desire country of origin information on foods (Refs. 1, 2, and 3). The consumer surveys also indicate that consumers may desire COOL not out of any intrinsic value they place knowing the country of origin, but because it represents to them a proxy for product safety or quality, serves as an indicator of desirable environmental or labor practices, or represents a means for them to support U.S. or another country's producers.

An important question to consider in weighing the economic basis for mandatory COOL is whether there are any barriers to the voluntary, private provision of the optimal level of country of origin information. Private costs incurred by firms in the supply chain represent the primary barrier to the voluntary provision of country of origin information. There are no significant regulatory barriers to the voluntary provision of this information.

For the market to voluntarily provide credible country of origin declarations, information regarding country of origin must flow between firms involved in all stages of the food supply chain. Just as it is for consumers, country of origin information is a credence attribute for firms in the food supply chain. Firms must incur costs to provide credible country of origin information. If the increase in price firms in the supply chain expect to receive for providing consumers with country of origin information is less than the cost of providing it, then firms will not voluntarily incur the costs of providing this information.

If there were profits to be made from country of origin labeling, there would be strong incentives for firms to advertise and market country of origin labeled foods. Firms in the food supply chain would not be expected to forgo opportunities for additional profits. Retailers would demand that food manufacturers supply them with products having verifiable origin information. If consumers favored product by origin, food manufacturers would demand food commodities specifying origin and verifiable origin information.

U.S. farmers and fish harvesters could benefit financially from country of origin labels if consumers prefer domestic products to imports. In this

case labels would allow consumers to distinguish between imports and domestic products and make their choices accordingly. As a result, demand for domestic food products in the United States would rise along with domestic food prices. Further, domestic products would increase their market share relative to imports. However, if consumers do not generally prefer domestic products, labeling would confer little to no economic benefits to domestic producers.

Overall, there does not appear to be a compelling market failure argument regarding the provision of country of origin information. There appear to be no barriers to the provision of this information other than private costs to firms in the supply chain and low expected returns. Firms that would incur private costs to provide country of origin information would also enjoy the private benefits, if any, from consumer demand for the information. Thus, from the point of view of society, market mechanisms would ensure that the optimal level of country of origin information would be provided.

Alternative Approaches

Many aspects of the mandatory COOL provisions of Pub. L. 107–171 are prescriptive and provide little regulatory discretion for this proposed rulemaking. The law requires a statutorily defined set of food retailers to label covered commodities regarding their country of origin. The law also prohibits USDA from using a mandatory identification system to verify the country of origin of covered commodities. In its guidance for conducting analyses of regulatory benefits and costs, OMB suggests several categories of alternative approaches that agencies should consider during their analysis. Applicable categories of alternative approaches for this proposed rule are discussed below.

Different requirements for different segments of the regulated population: The mandatory COOL law explicitly defines the retailers required to provide country of origin labeling for covered commodities (namely, retailers as defined by PACA). Thus, there is no discretionary authority for designating which retailers are subject to the COOL labeling requirements. The law also requires that any person supplying a covered commodity to a retailer provide information to the retailer indicating the country of origin of the covered commodity. Again, the law provides no discretionary authority to this requirement.

Neither the law nor the proposed rule requires that any entity that produces or supplies covered commodities must market those commodities to retailers as defined by the law. Suppliers of covered commodities could completely avoid the requirements of this proposed rule by distributing their products through channels other than to the retailers subject to the law. Examples include retailers not subject to the law, foodservice firms, or exports.

The proposed rule does not require specific types of recordkeeping systems. Thus, retailers and suppliers of covered commodities will be able to develop their own least-cost systems to implement COOL requirements. For example, one firm may depend primarily on manual identification and paper recordkeeping systems, while another may adopt automated identification and electronic recordkeeping systems.

Alternative levels of stringency: USDA interprets the law as providing essentially no discretionary authority for providing alternative levels of stringency regarding the provision of country of origin information for covered commodities by retailers as defined by the statute. That is, retailers either provide the required country of origin information to their customers or they do not, which provides no scope for alternative levels of stringency. There is, however, some degree of discretionary authority with regard to how the required information may be substantiated and how USDA may enforce the law and ensure compliance with this proposed rule.

USDA received numerous comments suggesting self-certification as a means to identify country of origin, particularly for producers. USDA does not consider self-certification alone, absent records to substantiate the information, as a viable or credible alternative for compliance with this proposed rule. In addition, with no mechanism to verify compliance, such a system could be highly vulnerable to misrepresentation. USDA believes that some type of certification could be used as a means to transfer country of origin information from one level of the supply chain to the next, but such certification would need to be supported by adequate documentation to verify country of origin claims.

An alternative to the proposed recordkeeping requirements would be to supplement the recordkeeping requirements with required affidavits attesting to the veracity of country of origin claims. Suppliers could be required to provide an affidavit for each transaction to the immediate subsequent recipient certifying that the country of origin claims and, if applicable, designations of wild or farm-raised, being made are truthful and that the required records are being maintained. This system of providing affidavits could provide enhanced assurance that each participant in the supply chain is fully accountable for providing valid country of origin claims.

Alternative effective dates of compliance: The law states that country of origin labeling shall apply to the retail sale of a covered commodity beginning September 30, 2004. USDA interprets this requirement as providing no discretionary authority for alternative effective dates of compliance.

Alternative methods of ensuring compliance: Country of origin labeling is, by its very nature, an information-based activity. Thus, USDA believes that there are essentially no alternatives for verifying compliance other than through the use of an audit-based system to review the information which is both generated to substantiate country of origin claims and passed along the supply chain. USDA is precluded by law from implementing any mandatory system that might be used to verify country of origin information.

In terms of compliance activities, the law states that USDA shall, to the maximum extent practicable, enter into partnerships with States having enforcement infrastructure to assist in the administration of the law. USDA will seek to enter into such partnerships with States where possible to conduct compliance activities at retail establishments. Because suppliers of covered commodities are often located outside of a particular State's boundaries and jurisdictions, USDA concludes that it would be most practicable for States to focus their enforcement activities on entities in the supply chain within their boundaries.

Informational measures: Providing information to consumers is the intent of this proposed rule and is the chosen regulatory alternative.

More market-oriented approaches: There is no regulatory alternative to implementation of mandatory COOL by the statutorily specified retailers. The proposed rule, however, provides flexibility in allowing market participants to decide how best to implement mandatory COOL in their operations.

Considering specific statutory requirements: Within the parameters established by the legislation, one area which allows for regulatory discretion relates to the definition of an ingredient in a processed food item. The legislation provides that the term ''covered commodity'' does not include an item

''if the item is an ingredient in a processed food item.'' The legislation does not, however, define a processed food item, nor what constitutes an ingredient in a processed food item. Therefore, alternative definitions of a processed food item are possible. The scope of commodities, or number of items, covered by the proposed rule changes under alternative definitions of a processed food item.

Analysis of Benefits and Costs

The baseline for this analysis is the present state of the affected industries absent mandatory COOL. USDA recognizes that some directly affected firms have already begun to implement changes in their operations to accommodate the law and the expected requirements of this proposed rule. The benefits and costs examined in the analysis represent incremental impacts relative to their state prior to any changes resulting from the mandatory COOL statute or this proposed rule. If consumers would pay extra for the certainty that their food was produced in a particular country, and if labeling is relatively inexpensive, there is an economic incentive to make consumers aware of this product characteristic. Retailers, food manufacturers, and producers would share the increased net revenues and have an incentive to voluntarily label. Given that retailers and food manufacturers have the greatest incentive to be informed about what consumers desire, the fact that they do not currently provide country of origin information to consumers on a widespread basis suggests that they believe that the costs of labeling outweigh the returns.

Some analysts argue that country of origin information does not matter to U.S. consumers (See, for example, Ref. 4). Freshness, quality, price, and other factors may be more important to consumers than country of origin. If country of origin does not influence demand, there is no incentive to provide country of origin labels. Retailers or food manufacturers providing country of origin labels would incur labeling costs (including the cost of segregating domestic and imported products) but receive no corresponding benefits. Even if consumers do favor labeled products over unlabeled products, labeling costs may outweigh the increase in market returns from increased demand and prices.

In any event, economic efficiency of mandatory COOL will be maximized by implementing the program so that it reduces the cost of providing this information as much as possible.

Benefits: The expected benefits from implementation of this rule are difficult to quantify. However, we believe that the benefits will be small and will accrue mainly to those consumers who desire country of origin information. We find little evidence to support the notion that consumers' stated preferences for country of origin labeling will lead to increased demands for covered commodities bearing the U.S.-origin label.

There is considerable research indicating that a majority of consumers have at least some interest in their food's origin, and a smaller but significant proportion of consumers that have a strong desire to know where their food was produced. However, this research indicates that consumer desire for country of origin labeling stems primarily from their concerns about the safety of the food they eat. To a lesser extent, this research indicates that consumer desire for country of origin labeling stems from concerns about the quality and freshness of products and a preference to support U.S. producers.

There is less research on how much consumers would pay to know the origin of the food they eat. Some recently conducted surveys, however, report that 71 percent to 73 percent of consumers are willing to pay more to know the origin of their food (Refs. 1 and 2). Measures of willingness to pay, however, do not necessarily translate directly into measures of what consumers would actually pay when faced with marketplace decisions.

One frequently cited study, Umberger, *et al.* (Ref. 2) assessed consumers' willingness to pay for labeled beef of U.S. origin. They found that 73 percent of survey participants in Denver, Colorado, and Chicago, Illinois, were willing to pay premiums of 11 percent or more for steak and 24 percent or more for ground beef when labeled as beef of U.S.-origin. These findings have been cited by others as an indicator of the potential benefits that would accrue from country of origin labeling.

For example, using the average amounts that consumers were willing to pay for U.S.-labeled beef from the Umberger, *et al.* study, VanSickle, *et al.* (Ref. 5) estimated that benefits to consumers for country of origin labeling of fresh beef muscle cuts and ground beef would equal $5.8 billion per year based on recent per-capita consumption figures and price data for January and February 2003. We believe, however, that this estimate is based on an inappropriate use of the results from the Umberger, *et al.* study.

There are several limitations with the willingness-to-pay studies that call into question the appropriateness of using this approach to make determinations about the benefits of this proposed rule. First, consumers in such studies often overstate their willingness to pay for a product. This typically happens because survey participants are not constrained by their normal household budgets when they are deciding which product or product feature they most value. In the case of the Umberger, *et al.* study, consumers ranked the importance of country of origin information 8th out of 17 factors, with food safety and freshness receiving the highest rankings. This suggests that, when faced with a real budget constraint, consumers might actually be willing to pay considerably less for the country of origin information than they indicate when surveyed.

Second, in most of these willingness-to-pay studies, consumers are not faced with the actual choices they would face at retail outlets. For example, consumers in the Umberger, *et al.* study were only faced with making a hypothetical choice between U.S. beef and generic beef. Under the proposed rule, however, they may be faced with choosing between U.S. beef, beef from several other specific countries, and beef from a mixture of countries including the United States. In addition, the labels they see in the store will contain information about price and quality that may also affect the value they place on country of origin information. Visual characteristics and presentation of products in the store would also influence choice in addition to label information.

Third, consumers' willingness-to-pay as elicited from a survey is a function of the questions asked. Different questionnaires will yield different results. For example, if consumers were told that nearly all of the beef they currently consume came from the United States before they were asked about their willingness to pay for U.S.-labeled beef, the strength of their preference for origin information would probably be less than if consumers were not told about the correct origin of the beef they consume.

Finally, the results reported from these studies do not take into account changes in consumers' preferences for a particular product or product attribute over time. While consumers may be willing to pay more for a given attribute initially, as time goes on and they gain more experience with the product attribute, they may be less willing to pay for products with this attribute.

The authors of the Umberger, *et al.* study acknowledge many of these limitations (Ref. 6). They state that the

results obtained from these types of surveys do not always predict consumer behavior. They also state that because of the limitations inherent in willingness-to-pay studies, the results of their study should not be used to determine the economic impact of COOL.

This is not to say that willingness-to-pay studies, such as the study conducted by Umberger, *et al.*, are not useful. They are valuable for improving our understanding of consumer preferences for product characteristics. The results of these studies support the notion that at least some consumers desire this information and are willing to pay some amount for it.

With respect to agricultural producer benefits, even if consumers are willing to pay more for U.S.-labeled products, this does not necessarily mean that U.S. producers would benefit from an increase in the demand for their products. U.S. producers will only benefit if the country of origin labeling increases demand and ultimately the farm price enough to cover producers' costs of labeling itself. Current evidence on country of origin labeling, however, does not suggest that U.S. producers will receive sufficiently higher farm prices for U.S.-labeled products to cover the costs of labeling. Moreover, it is even possible that producers could face lower farm prices as a result of labeling costs being passed back from retailers and processors.

For the past 3 years, FSIS and AMS have offered a voluntary program by which suppliers can place U.S.-origin declarations (certified to be accurate by USDA) on many of the meat products covered by this rule. However, no suppliers of these covered commodities have participated in this program.

The lack of participation in government-provided programs for labeling products of U.S. origin provides evidence that consumers do not have a strong preference for country of origin labeling. At the very least it indicates that retailers and food manufacturers do not believe consumer preferences for country of origin information are strong enough to cause demand and prices for labeled products to increase sufficiently to pay for the costs of implementing a labeling program.

We can see what happens when consumers do have a strong desire for labeling by contrasting the lack of participation in the U.S.-origin labeling programs to the high level of participation in the organic labeling program. Labeling provided under the organic program provides compelling evidence that processors and retailers will provide consumers with the information they desire when they believe that consumers have a strong preference for this information and are willing to pay for it.

Some may point to the fact that many of the commodities covered by this rule are already labeled as to country of origin as proof that consumers do desire this information. The existence of country of origin information by itself, however, does not indicate that consumers place any value on this information. For many covered commodities, the cost of identifying country of origin is minimal, and producers and processors face little added expense in differentiating their product from others by country of origin.

The primary indication of the strength of consumer preference for country of origin information would be whether processors and retailers were able to extract a price premium for promoting this information. While many products sold by retailers have country of origin labels, there appear to be far fewer of these products that retailers attempt to sell based on this information. Even when they do, there is little evidence that they are able to extract a premium for country of origin information.

The results from consumer surveys provide additional evidence that country of origin labeling may not lead to higher demand and prices for U.S.-labeled products. The results from these surveys indicate that the number of consumers with strong preferences for U.S.-origin labeled products is not sufficient for U.S. producers to benefit from labeling. This occurs because the supply of U.S.-origin products is likely to exceed the total quantity demanded by those who would pay a higher price for U.S. origin products (*see,* for example, Ref. 7).

While consumers often state a preference for country of origin information, they also indicate that they desire this information because they believe it provides them with important information about the safety of their food. This suggests that consumers may use country of origin labeling as a proxy for food safety information.

Country of origin labeling, as formulated under the proposed rule, does not provide valid information regarding food safety. This is because the proposed rule does not provide the traceability required to permit the government to rapidly respond to a contamination or disease outbreak.

Furthermore, the country of origin information provided under this rule could cause some consumers to incorrectly attribute greater risks to products from a specific country than is justified. If this sentiment causes enough consumers to avoid this product and consequently pay a higher price for a competing country's product, the result would lead to a decline in consumer welfare.

Costs: To estimate the costs of this proposed rule, USDA employed a two-pronged approach. First, USDA estimated implementation costs for firms in the industries directly affected by the proposed rule. The implementation costs on directly affected firms represent increases in capital, labor, and other input costs that firms will incur to comply with the requirements of the proposed rule. These costs are expenses that these particular firms must incur, but are not necessarily costs to the U.S. economy as measured by the value of goods and services that are produced. USDA then applied the implementation cost estimates to a general equilibrium model to estimate overall impacts on the U.S. economy after a 10-year period of economic adjustment. The model provides a means to estimate the change in overall consumer purchasing power after the economy has adjusted to the requirements of the proposed rule.

To develop its estimates of implementation costs, USDA drew upon available studies, comments and testimony received on the voluntary COOL guidelines and this rulemaking, and its knowledge of the affected industries. USDA developed a range of estimated implementation costs to reflect the likely range of first-year costs for directly affected firms. At a minimum, all directly affected firms will need to comply with the recordkeeping requirements of the proposed rule. Thus, the lower range of incremental cost estimates reflect the costs to modify and maintain current recordkeeping systems. USDA believes, however, that firms will incur other capital and operational costs to comply with the proposed rule. For example, firms may need to modify their production, storage, distribution, and handling systems to enable country of origin information to be tracked and maintained from start to finish. Thus, the upper range of incremental cost estimates reflect not only additional recordkeeping costs, but also additional payments by the directly affected firms for capital, labor, and other expenses that will be incurred as a result of operational changes to comply with the proposed rule.

Estimated first-year incremental costs for directly affected firms range from $582 million to $3.9 billion. Estimated costs per firm range from $180 to $443 for producers, $4,048 to $50,086 for intermediaries (such as handlers,

importers, processors, and wholesalers), and $49,581 to $396,089 for retailers. Although the estimated incremental costs represent additional payments individual firms will incur to comply with the proposed rule, the sum of such payments does not represent the overall impacts of the proposed rule on the entire U.S. economy.

In effect, these incremental costs represent increases in the costs of production for the affected firms. Firms will need to recover these costs to stay in business in the long run. To do this, firms will either pass the higher costs back to their suppliers by paying lower prices for inputs or pass the higher costs forward to their customers by charging higher prices for outputs. The directly affected industries as well as other, indirectly affected sectors of the economy will thus adjust over the longer run to the higher costs imposed by the proposed rule.

To estimate the overall impacts of the higher costs of production resulting from the proposed rule, USDA used a model of the entire U.S. economy. USDA adjusted the model by imposing the estimated implementation costs on the directly impacted segments of the economy in a computable general equilibrium model developed by the USDA's Economic Research Service (ERS). The model estimates changes in prices, production, exports, and imports as the directly impacted industries adjust to higher costs of production over the longer run (namely, 10 years). Because the model covers the whole U.S. economy, it also estimates how other segments of the economy adjust to changes emanating from the directly affected segments and the resulting change in overall productivity of the economy.

Annual costs to the U.S. economy in terms of reduced purchasing power resulting from a loss in productivity after a 10-year period of adjustment are estimated to range from $138 million to $596 million. Domestic production for all of the covered commodities at the producer and retail levels is estimated to be lower and prices to be higher. In percentage terms, however, the production declines are larger than the price increases, so estimated industry revenue declines for all of the covered commodities. In addition, U.S. exports are estimated to decrease for all covered commodities, and U.S. imports also are estimated to decrease for all covered commodities except fish, which shows no change to a slight increase.

It may appear counterintuitive to have first-year incremental costs ranging from $582 million to $3.9 billion for directly impacted firms, but smaller overall costs ranging from $138 million to $596 million in reduced consumers' purchasing power after 10 years of adjustment. Nonetheless, these results are consistent with each other.

Directly affected firms incur additional costs to implement the requirements of the proposed rule, which take the form of additional payments for capital, labor, and other operating expenses. For the most part, however, such additional expenses for directly affected firms ultimately return to the economy. For example, additional human resource costs incurred to develop and maintain recordkeeping systems, segregate and display product properly, and so forth are also wages that will be spent on food, transportation, housing, and other goods and services in the economy. Likewise, capital costs for warehouse reconfiguration or changes in processing plants involve equipment and supplies purchased from firms that pay wages, purchase raw materials, and supply goods and services. Thus, the implementation costs incurred by directly affected firms are not entirely lost to the economy, but these incremental costs do increase the costs of production and decrease the productivity of the affected industries.

The findings indicate that directly affected industries recover the higher costs imposed by the proposed rule through slightly higher prices for their products. With higher prices, the quantities of their products demanded also decline to the extent that total industry revenues also decline. Consumers pay slightly more for the products and purchase less of the covered commodities. Overall, however, the covered commodities account for a comparatively small portion of the U.S. economy and of consumers' budgets. Thus, the ''deadweight'' economic burden of the proposed rule is considerably smaller than the incremental costs to directly affected firms. The remainder of this section describes in greater detail how USDA developed the estimated direct, incremental costs and the overall costs to the U.S. economy.

Cost assumptions: The industries directly affected by this proposed rule are those responsible for producing and marketing the covered commodities at retail stores as defined by the law. Consumers of the covered commodities at these retail outlets are also directly affected by this proposed rule.

This proposed rule directly regulates the activities of retailers (as defined by the law) and their suppliers. Retailers are required by the proposed rule to provide country of origin information for the covered commodities that they sell, and firms that supply covered commodities to these retailers must provide them with this information. In addition, all other firms in the supply chain for the covered commodities are potentially affected by the proposed rule because country of origin information will need to be maintained and transferred along the entire supply chain to enable retailers to correctly label the products at the point of final sale.

In general, the supply chains for the covered commodities consist of farm or fishing operations, processors, wholesalers, and retailers. Table 1 contains a listing of the number of entities in the supply chains for each of the covered commodities.

The total cost of this proposed rule will depend on the number of entities affected and the incremental cost to each affected firm in the supply chain for the covered commodities. The proposed rule requires that retailers provide consumers with country of origin information for the covered commodities and also requires that their suppliers provide them with the information needed to substantiate these country of origin claims. To provide credible country of origin claims, firms in the supply chain will need to create, maintain, and transfer information from one level of the chain to the next. The proposed rule allows industry participants to determine the recordkeeping and information transfer mechanisms needed for compliance. Consequently, firms will modify existing recordkeeping systems and business practices as necessary to ensure compliance with the proposed rule.

Number of firms and number of establishments affected: USDA estimates that approximately 1,377,000 establishments owned by approximately 1,339,000 firms would be either directly or indirectly affected by this rule. In general, the supply chain for each of the covered commodities includes agricultural producers or fish harvesters, processors, wholesalers, and retailers. Imported products may be introduced at any level of the supply chain. Other intermediaries, such as auction markets, may be involved in transferring products from one stage of production to the next. Table 1 provides estimates of the affected firms and establishments.

TABLE 1.—ESTIMATED NUMBER OF AFFECTED ENTITIES

Type	Firms	Establishments
Beef, Lamb, and Pork:		
Cattle and Calves	1,032,670	1,032,670
Sheep and Lambs	64,170	64,170
Hogs and Pigs	67,150	67,150
Stockyards, Dealers & Market Agencies	7,775	7,775
Livestock Processing & Slaughtering	3,098	3,358
Meat & Meat Product Wholesale	3,185	3,305
Fish:		
Farm-Raised Fish and Shellfish	3,540	3,540
Fishing	76,499	76,452
Seafood Product Preparation & Packaging	741	823
Fish & Seafood Wholesale	2,897	2,980
Perishable Agricultural Commodities:		
Fruits & Vegetables	47,986	47,986
Frozen Fruit, Juice & Vegetable Mfg	163	257
Fresh Fruit & Vegetable Wholesale	9,026	12,879
Peanuts:		
Peanut Farming	12,221	12,221
Roasted Nuts & Peanut Butter Mfg	140	159
Peanut Wholesalers	83	83
General Line Grocery Wholesalers	3,183	3,993
Retailers	4,512	37,176
Totals:		
Producers	1,303,846	1,303,799
Intermediaries	30,291	35,612
Retailers	4,512	37,176
Grand Total	1,338,649	1,376,587

Supply chains for the covered commodities are mostly specialized from farm production through manufacturing levels. After manufacturing, the degree of specialization diminishes, until products reach retail outlets where most affected retailers sell many of the covered commodities. Even after manufacturing, however, there are specialized wholesalers who distribute the products to retail outlets. Firms and establishments that specialize in the production and distribution of each covered commodity are listed within each group. General-line wholesalers and retailers that handle several of the covered commodity groups are listed separately at the bottom of the table.

For all covered commodities, the numbers of manufacturing and wholesaling establishments are estimated from the 2001 County Business Patterns (Ref. 8) and the 2000 Statistics of U.S. Businesses (Ref. 9). An establishment is a single physical location where business is conducted or where services or industrial operations are performed. A firm is a business organization consisting of one or more domestic establishments in the same industry that was specified under common ownership or control. The firm and the establishment are the same for single-establishment firms. County Business Patterns and Statistics of U.S. Businesses report data for companies with at least one paid employee.

Nonemployer Statistics are also reported by the U.S. Census Bureau (Ref. 10). Nonemployer Statistics reports data for companies with no paid employees, such as independent contractors. Because nonemployer businesses are generally very small, we assume that nonemployer manufacturing and wholesaling businesses do not supply commodities to retailers of the size covered by this proposed rule (*i.e.*, retailers selling fresh and frozen fruits and vegetables with an invoice value of at least $230,000). Such small businesses likely are engaged in localized specialty operations that would not supply larger retailers. Therefore, nonemployer businesses are not included in the assessment of the firms and establishments impacted by the proposed rule. We invite comments on the validity of this assumption.

We assume that all firms and establishments identified in Table 1 will be impacted by the proposed rule, although some may not produce or sell products ultimately within the scope of the proposed rule. While this assumption likely overstates the number of affected firms and establishments, we believe that the assumption is reasonable. Detailed data on the number of entities categorized by the marketing channels in which they operate and the specific products that they sell are not available.

Beef, lamb, and pork: USDA estimates that there are 1,032,670 operations with cattle and calves (Ref. 11), 64,170 operations with sheep and lambs (Ref. 12), and 67,150 operations with hogs and pigs (Ref. 13). For farming operations, the firm and the establishment are considered to be one and the same. We assume that all of these livestock production operations are affected by the proposed rule, even though we recognize that substantial portions of the covered commodities produced from the livestock of these operations will fall outside of the proposed rule. Covered commodities sold at foodservice establishments, exported, used as ingredients in processed food items, or sold at retail outlets not covered by the proposed rule are outside the scope of the proposed rule. When livestock are born, the producer typically does not know the ultimate destination for the final product. We assume that all producers will seek to keep their market options open, whether the final product moves to a covered retailer or to another marketing outlet. In addition, there are 7,775 posted stockyards, bonded dealers and market agencies that are involved in

buying, selling, and marketing livestock (Ref. 14). Some of these stockyards, dealers, and market agencies may deal exclusively with other species such as horses, but that number is small and expected to minimally impact the estimated number of firms and establishments.

We estimate that there are 3,358 livestock slaughtering and processing establishments and operated by 3,098 firms. These numbers may be slightly overstated, since businesses that do not slaughter or process cattle, sheep, or hogs are included in these totals. For example, a plant that slaughtered only bison would be included in the totals, but the number of such businesses is very small. Also, some plants that process beef, lamb, or pork may produce only processed products that are excluded from the scope of the proposed rule. The number of such firms and establishments is unknown, but expected to be small. The number of meat and meat product wholesale firms is estimated to be 3,185 and the number of establishments is estimated to be 3,305.

Fish. Fish production includes both farm-raised or aquaculture production and wild-caught fishing operations. Aquaculture operations include those producing food fish, crustaceans, and mollusks, and the estimated number of operations is 3,540 (Ref. 15). Most wild fish harvesting operations are nonemployer businesses. Census Bureau data are used to estimate the number of fishing, seafood product preparation and packaging, and fish and seafood wholesale establishments and firms (Refs. 8, 9, and 10). As with the beef, lamb, and pork firms and establishments, some of these fish and seafood firms and establishments may not produce or sell covered commodities. While the number of such entities is unknown, we assume that all firms and establishments will be impacted by the proposed rule.

Perishable agricultural commodities: Census of Agriculture data provide estimates of the number of fruit and vegetable farming operations (Ref. 16). The total number of fruit farms is estimated at 81,956 and the total number of vegetable farms at 31,030. USDA estimates that 34.6 percent of fruit production and 62.0 percent of vegetable production is used for fresh and frozen products. USDA assumes that fruit and vegetable producers generally know whether their production is destined for fresh or processing use, meaning that some producers will be unaffected by the proposed rule depending upon the marketing channels for which they produce. Data on the number of farming operations categorized by the ultimate end uses of the products do not exist. Therefore, USDA assumes that the number of farms producing fruits and vegetables for fresh and frozen use is proportional to the production of fresh and frozen fruits and vegetables relative to total production. Hence, the number of affected fruit farms is estimated at 28,357 and the number of vegetable farms at 19,339, for a total of 47,696 farming operations producing fruits and vegetables that will be impacted by this proposed rule.

Businesses that process frozen fruits and vegetables and fresh fruit are estimated from Census Bureau data (Refs. 8, 9, and 10), and are estimated to include 163 firms operating 257 establishments. These estimates may be overstated by the inclusion of businesses that produce frozen juice and businesses that produce frozen fruits and vegetables in forms not covered by the proposed rule. Businesses wholesaling frozen fruits and vegetables are included in packaged frozen food wholesale firms and include 9,026 firms operating 12,878 establishments.

Peanuts: Census of Agriculture data provide an estimate of 12,221 peanut farming operations (Ref. 16). Businesses that roast nuts and manufacture peanut butter are estimated from Census Bureau data to include 140 firms operating 159 establishments (Refs. 8, 9, and 10). These numbers include companies that produce only peanut butter (not a covered commodity) or that may roast nuts not covered by the proposed rule, but the number of such operations is unknown. Businesses that wholesale peanuts are estimated from peanut marketing agreement data (Ref. 17) to include 83 firms and the same number of establishments.

General-line wholesalers and retailers: In addition to specialty wholesalers that primarily handle a single covered commodity, there are also general-line wholesalers that handle a wide range of products. We assume that these general-line wholesalers likely handle at least one and possibly all of the covered commodities. Therefore, we include the number of general-line wholesale businesses among entities affected by the proposed rule. This includes 3,183 firms operating 3,993 establishments.

Retailers covered by this proposed rule must meet the definition of a retailer as defined by PACA. The number of such businesses is estimated from PACA data (Ref. 18). The PACA definition includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Therefore, the number of retailers impacted by this rule is considerably smaller than the total number of food retailers nationwide. Census Bureau data show that there were 92,383 food store firms and 102 warehouse club and superstore firms in 2000 (Ref. 9). There were 127,566 food store establishments and 2,051 warehouse club and superstore establishments in 2001 (Ref. 8). Thus, we estimate that there are 92,485 retail firms and 129,617 retail establishments that account for most of the retail sales of the covered commodities. However, only 4,512 retail firms operating 37,176 retail establishments are included under the statutory definition of a PACA retailer.

Source of cost estimates: Data on costs to implement mandatory COOL are largely unavailable. There are State programs for country of origin labeling of some products, CBP and regulations specify labeling requirements for imported products, and some companies choose to provide country of origin labels for marketing purposes. There are, however, no mandatory programs with similar requirements and coverage that would provide substantive guidance for estimating the costs of this proposed rule.

On October 11, 2002, USDA published voluntary guidelines (67 FR 63367) for country of origin labeling of the covered commodities. USDA invited public comments on the utility of these guidelines, including the costs and benefits of the program. USDA also prepared an estimate of the information collection burden that would be associated with implementation of the voluntary guidelines and invited comments on the estimated information collection burden. In addition, USDA also sought comments on this rulemaking for mandatory COOL and held 12 public listening and information sessions across the country. We also met with many industry groups and individuals to discuss this rulemaking and visited facilities at all levels of the supply chain to learn about current industry practices and changes that would be required to implement mandatory COOL. In addition, a number of studies have been produced to address various issues relating to the economic impacts associated with implementation of mandatory COOL.

To develop estimates of the cost of implementing this proposed rule, we reviewed the comments received on the voluntary guidelines, the comments received regarding this rulemaking for mandatory COOL, and available economic studies. No single source of information, however, provided

comprehensive coverage of all economic benefits and costs associated with mandatory COOL for all of the covered commodities. We applied our knowledge about the operation of the supply chains for the covered commodities to synthesize the available information about the proposed rule's potential costs.

Cost drivers: This proposed rule is a retail labeling requirement. Retail stores subject to this proposed rule will be required to inform consumers as to the country of origin of the covered commodities that they sell. To accomplish this task, individual package labels or other point-of-sale materials will be required. If products are not already labeled by suppliers, the retailer will be responsible for labeling the items or providing the country of origin information through other point-of-sale materials. This may require additional retail labor and personnel training. A recordkeeping system will be required to ensure that products are labeled accurately and to permit compliance and enforcement reviews. For most retail firms of the size defined by the statute (*i.e.*, those retailing fresh and frozen fruits and vegetables with an invoice value of at least $230,000), we assume that recordkeeping will be accomplished primarily by electronic means. Modifications to recordkeeping systems will require software programming and likely will entail additional computer hardware. We expect that retail stores will also undertake efforts to ensure that their operations are in compliance with the proposed rule.

Prior to reaching retailers, most covered commodities move through distribution centers or warehouses. Direct store deliveries (such as when a local truck farmer delivers fresh produce directly to a retail store) are an exception. Distribution centers will be required to provide retailers with country of origin information. This will require additional recordkeeping processes to ensure that the information passed from suppliers to retail stores permits accurate product labeling and permits compliance and enforcement reviews. Additional labor and training may be required to accommodate new processes and procedures needed to maintain the flow of country of origin information through the distribution system. There may be a need to further segregate products within the warehouse, add storage slots, and alter product stocking, sorting, and picking procedures.

Packers and processors of covered commodities will also need to inform retailers and wholesalers as to the country of origin of the products that they sell. To do so, their suppliers will need to provide documentation regarding the country of origin of the products that they sell. Maintaining country of origin identity through the packing or processing phase is more complex if products from more than one country are involved. For example, the identity of fresh kiwi fruit from California and New Zealand entering the same packing house would need to be maintained throughout the packing operation. The efficiency of operations may be affected as products are segregated in receiving, storage, processing, and shipping operations. For packers and processors handling products from multiple origins, there may also be a need to separate shifts for processing products from different origins, or to split processing within shifts. In either case, costs are likely to increase. Records will need to be maintained to ensure that accurate country of origin information is retained throughout the process and to permit compliance and enforcement reviews.

Processors handling only domestic origin products or products from a single country of origin may have lower implementation costs compared with processors handling products from multiple origins. A processor that already sources products from a single country of origin would not face additional costs associated with product segregation and tracking. Procurement costs also may be unaffected in this case, if the processor is able to continue sourcing products from the same suppliers. Alternatively, a processor that currently sources products from multiple countries of origin may choose to limit its source to a single country of origin to avoid costs associated with product segregation and tracking. In this case, such cost avoidance would be partially offset by additional procurement costs to source supplies from a single country of origin. Additional procurement costs may include higher transportation costs due to longer shipping distances and higher acquisition costs due to supply and demand conditions for products from a particular country of origin, whether domestic or foreign.

At the production level, agricultural producers and fish harvesters will need to create and maintain records to establish country of origin information for the products they sell. This information will need to be transferred and maintained as the products move through the supply chains. In general, additional producer costs include the cost of establishing and maintaining a recordkeeping system for country of origin information, animal or product identification, and labor and training.

Recordkeeping burden: On November 21, 2002, USDA published in the **Federal Register** a Notice of Request for Emergency Approval of a New Information Collection (67 FR 70205) for the interim guidelines for Voluntary Country of Origin Labeling for Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts that were published on October 11, 2002 (67 FR 63367). The Notice provided USDA's estimate of the recordkeeping burden imposed by voluntary COOL, under the requirements of PRA. That PRA cost estimate related solely to the recordkeeping burden and did not consider other costs imposed by COOL. Also, PRA requirements do not address the benefits of a program. Thus, PRA recordkeeping burden published by USDA did not reflect the full costs and benefits of voluntary COOL.

Cost analyses: Despite the numerous comments that USDA has received on the voluntary guidelines and on this rulemaking, there is surprisingly little quantitative evidence on the likely costs of mandatory COOL. The proposed rule does not specify the systems that affected entities must put in place to implement mandatory COOL. Instead, market participants will be given flexibility to develop their own systems to comply with the proposed rule. There are many ways in which the proposed rule's requirements may be met, and this contributes to the difficulty in arriving at a quantitative assessment of cost impacts. Nonetheless, a number of studies and submitted comments shed light on the potential costs of mandatory COOL. Generally, comments addressed costs for a particular firm or a segment of a particular supply chain for a given covered commodity. Of the studies on potential economic impacts of mandatory COOL, only a handful developed estimated incremental implementation costs for market participants. We use the results of these studies, comments received, and knowledge of the affected industries to develop a range of the estimated incremental cost impacts of this proposed rule.

Estimated costs from the studies considered by USDA are summarized in Table 2. The studies are VanSickle, McEowen, Taylor, Harl, and Connor (Ref.5); Sparks Companies Inc. (Ref. 19); Hayes and Meyer (Ref. 20); and Davis (Ref. 21). All of the studies report annual costs, and the costs shown in Table 2 are assumed to represent first-year costs for mandatory COOL. In those cases in which the studies do not state so explicitly, USDA infers from the construction of the estimates that they represent first-year costs.

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Table 2. Summary of Studies of Mandatory COOL Cost Estimates

Study / Segment	Beef	Lamb	Pork	Fish	Fruit and Veg.	Peanuts	Total
VanSickle et al.	*Million dollars*						
Producer	158.2	9.8	11.6	n.a.	24.5	1.9	206.0
Processor	(a)	(a)	(a)	n.a.	(a)	(a)	2
Retailer	(a)	(a)	(a)	n.a.	(a)	(a)	68
Total	(a)	(a)	(a)	n.a.	(a)	(a)	276
Sparks/CBW							
Producer	307 - 365	n.a.	86.3(b)	1	20	n.a.	414.3 - 472.3
Processor	459 - 546	n.a.	164.5 - 456.5(b)	15	34	n.a.	672.5 - 1,051.5
Retailer	805	n.a.	263	50 - 70	1,500 - 3,000	n.a.	2,618 - 4,138
Total	1,571 - 1,716	n.a.	513.8 - 805.8	66 - 86	1,554 - 3,054	n.a.	3,705 - 5,662
Hayes and Meyer							
Producer	n.a.	n.a.	200.5	n.a.	n.a.	n.a.	200.5
Processor	n.a.	n.a.	636.7	n.a.	n.a.	n.a.	636.7
Retailer	n.a.	n.a.	187.5	n.a.	n.a.	n.a.	187.5
Total	n.a.	n.a.	1,024.7	n.a.	n.a.	n.a.	1,024.7
Davis							
Producer	1,311.4	n.a.	n.a.	n.a.	n.a.	n.a.	1,311.4
Processor	473	n.a.	n.a.	n.a.	n.a.	n.a.	473
Retailer	4,608.5	n.a.	n.a.	n.a.	n.a.	n.a.	4,608.5
Total	6,392.9	n.a.	n.a.	n.a.	n.a.	n.a.	6,392.9

(a) This amount is included in "Total" column.

(b) All costs for integrated pork production and packer/processor systems are allocated to the "Processor" category in this table.

n.a. Not applicable.

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At a minimum, mandatory COOL will entail the transfer of information through the respective supply chains, from production through retail sales. While information currently flows through the system as products move through the supply chains, there is little evidence that country of origin information typically is a component of this information flow. Thus, we believe that transfer and maintenance of records to establish COOL claims will be accomplished through modification of the current recordkeeping and systems used for accounting, purchasing, sales, production, and related operations.

VanSickle, *et al.* (Ref. 5) address the recordkeeping cost to producers in their critique of USDA's estimate of the recordkeeping burden for the voluntary COOL guidelines. This study notes that producers currently maintain a variety of records for taxes, health rules, and other programs and they conclude that producers would require no new recordkeeping. As part of their critique of USDA's recordkeeping burden estimates, VanSickle, *et al.* recalculated the recordkeeping burden using different producer numbers and different labor costs. Although the study does not separately show calculations for each type of producer, the report permits such calculations to be made. Table 2 shows the results of these calculations, with the estimated recordkeeping for producers of each covered commodity calculated separately.

VanSickle, *et al.* used the National Agricultural Statistics Service (NASS) data to determine the number of producers, and although in disagreement with the assumption, they used USDA's assumption that producers would require 8 hours to establish a recordkeeping system and 12 hours annually to maintain it. They then applied Bureau of Labor Statistics (BLS) data showing that the median value of farm labor is $7.67 per hour. Using these procedures, VanSickle, *et al.* estimated that the recordkeeping burden for cattle producers would be $63.2 million to establish a mandatory COOL recordkeeping system and $94.8 million to maintain it. Thus, the total first-year cost to cattle producers would be $158 million. Table 2 shows the results of similar calculations for lamb, pork, fruit, vegetable, and peanut producers, as well as processors and retailers. As discussed previously, however, recordkeeping costs are not the only costs that we anticipate will be incurred by many market participants when implementing the proposed rule. In addition, Vansickle, *et al.* did not adjust labor rates to account for benefits and other labor costs such as social security, unemployment insurance, and workers compensation. Thus, we believe that these estimated recordkeeping costs underestimate the total costs for affected entities to implement mandatory COOL.

Sparks Companies, Inc., and Cattle Buyers Weekly (Sparks/CBW) submitted to USDA a study that provides estimated costs of mandatory COOL for the beef, pork, fish, and perishable agricultural commodity supply chains (Ref. 19). For each supply chain, the study identifies cost estimates for producers, packers/processors, retail distributors, and retailers.

The Sparks/CBW study identifies additional cost factors expected to be incurred to implement mandatory COOL. For example, at the cow/calf rancher and backgrounder production level of the beef supply chain, the Sparks/CBW study identifies additional costs for animal identification tags/chips, data input and recordkeeping, and scanner hardware and software to read electronic tags. This study provides estimated costs for these processes, although supporting documentation for the cost estimates is not extensive. USDA concludes that most industry participants will likely incur the types of costs identified in the Sparks/CBW study. Based on comments received and knowledge of the affected industries, USDA further believes that the Sparks/CBW estimates represent the types of costs likely to be incurred as the affected entities implement the provisions of the proposed rule.

Hayes and Meyer developed cost estimates for the pork supply chain to implement mandatory COOL (Ref. 20). The study estimated the cost for the pork industry to adopt a traceback system similar to the system implemented in the European Union. While USDA expects some firms to adopt such a system, we do not believe that a full traceback system on an individual animal basis will be required to implement the proposed rule. Other less costly approaches likely will meet the requirements of the proposed rule. For example, group identification of animals and pork products may suffice to establish country of origin claims. Therefore, USDA concludes that the Hayes and Meyer study presents a cost estimate that is at the upper end of the estimated costs needed to implement mandatory COOL.

Davis developed cost estimates for the beef supply chain to implement mandatory COOL (Ref. 21). The study identifies factors anticipated to increase costs as a result of mandatory COOL, such as permanent animal identification, third party audit, and product segregation. The total estimated costs presented in the study are substantially higher than other studies suggest, and USDA concludes that actual costs for implementing the proposed rule likely will be lower.

Incremental cost impacts on affected entities: USDA believes that at a minimum, affected entities will need to modify their existing recordkeeping systems to accommodate this proposed rule. Comments received on the voluntary COOL guidelines and on this rulemaking, USDA's knowledge of the affected industries, and visits to establishments of affected firms indicate that few existing recordkeeping systems currently provide the information that will be needed to substantiate COOL claims throughout the supply chain. We concur, however, with the many comments received on the voluntary guidelines and on the mandatory COOL rulemaking that many entities in the supply chains for the covered commodities already maintain the types of records that will be needed to implement the proposed rule. Thus, the marginal impact of adapting existing recordkeeping systems is expected to be relatively small. The large number of affected entities, particularly producers, leads to larger aggregate recordkeeping costs even with relatively low costs per entity. USDA's estimates of these costs are detailed in the PRA analysis, which describes the anticipated recordkeeping burden associated with this proposed rule. Table 3 summarizes these estimated recordkeeping costs for the first year of implementation, which USDA assumes to be the lower range of potential implementation costs for this proposed rule because costs other than recordkeeping are not included.

TABLE 3.—LOWER RANGE ESTIMATES OF FIRST-YEAR IMPLEMENTATION COSTS PER AFFECTED INDUSTRY SEGMENT

[In millions of dollars]

	Beef	Lamb	Pork	Fish	F & V	Peanut	Multi	Total
Producer	196	13	12	9	5	1	.....	235
Intermediary	(1)	(1)	(1)	8	23	0	91	123
Retailer	(1)	(1)	(1)	(1)	(1)	(1)	224	224
Total	[2] 196	[2] 13	[2] 12	[2] 16	[2] 28	[2] 2	315	582

[1] These costs are included in the ''Multi'' column.
[2] This figure represents a partial total for this covered commodity, with remaining costs included in the ''Multi'' column.

As shown in Table 3, USDA estimates that the direct, incremental cost for firms to implement this proposed rule will total at least $582 million in the first year. This is the estimated incremental or marginal cost for firms to comply with the new recordkeeping requirements for mandatory country of origin labeling. Costs to producers are estimated at $235 million, costs to intermediaries such as handlers, processors and wholesalers are estimated at $123 million, and costs to retailers are estimated at $224 million. USDA believes, however, that there likely will be additional operational costs incurred as a result of this proposed rule.

To estimate upper range costs of this proposed rule, we focus on units of production that are impacted rather than entities that are affected. The main reason for doing so is that available studies of the potential costs of mandatory country of origin labeling mainly estimate costs per unit. Thus, determining the appropriate number of units is an important step and provides a basis for comparing estimates from different sources.

The upper range cost estimates developed by USDA represent the likely high end of costs to implement fully the proposed rule in the first year. The upper range cost estimates do not represent the absolute maximum cost estimates reported in available studies or in comments submitted to USDA. Rather, the upper range cost estimates represent USDA's assessment of available information on implementation costs and the reasonableness of estimated costs at the upper end of the spectrum.

For livestock producers the relevant unit of production is an animal because there will be costs associated with maintaining country of origin information on each animal. These costs may include recordkeeping and ear tagging, segregation, and related means of identification on either an individual animal or lot basis. Annual domestic slaughter numbers are used to estimate the flow of animals through the live animal production segment of the supply chain. Table 4 shows annual slaughter numbers for cattle, hogs, and sheep and lambs (Ref. 22).

TABLE 4.—ESTIMATED ANNUAL UNITS OF PRODUCTION AFFECTED BY MANDATORY COUNTRY OF ORIGIN LABELING

	Beef	Pork	Lamb	Fish	F & V	Peanuts
	Million Head			Million Pounds		
Producer	36.8	100.3	3.3	7,707	97,083	4,239
	Million Pounds					
Intermediary	26,914	18,375	367	4,112	115,982	713
Retailer	7,800	2,214	135	1,702	48,017	222

For fish producers, production is measured by round weight (live weight) pounds of fish, except mollusks, which excludes the weight of the shell. Wild-caught fish and shellfish production is measured by U.S. domestic landings for fresh and frozen human food, which was estimated at 6,691 million pounds for 2001 (Ref. 23). USDA assumes that fish harvesters generally know whether their catch is destined for fresh and frozen markets, canning, or industrial use. Overall production numbers for aquaculture or farm-raised fish are estimated from United Nations Food and Agriculture Organization data. In 2001, U.S. aquacultural production was estimated at 1,016 million pounds (Ref. 24). USDA thus estimates the total production of wild and farm-raised fish and shellfish at 7.7 billion pounds.

For fruits and vegetables, USDA assumes that essentially all production is predestined for fresh or processing use. That is, growers know before the crop is produced whether it will be sold for fresh consumption or for processing. However, USDA assumes that producers do not know whether their products ultimately will be sold to retailers, foodservice firms, or exporters. Therefore, USDA assumes that all fresh fruit and vegetable production and production destined for frozen processors at the producer level will be impacted by this proposed rule. The total production figure thus represents an estimate of volume of fresh and frozen production impacted by the proposed rule. Table 4 presents production estimates for 2001 for fruits and vegetables (Ref. 25).

As with livestock production, USDA assumes that all peanut production will be impacted by this proposed rule. Peanut producers generally do not know what end uses or marketing channels their production will follow. Depending on qualities and grades produced, a given peanut producer's harvest could end up in a variety of product forms sold through several marketing outlets. U.S. peanut production for 2001 is shown in Table 4 (Ref. 25).

USDA assumes that all sales by intermediaries such as handlers, packers, processors, wholesalers, and importers will be impacted by the proposed rule. Although some product is destined exclusively for foodservice or other channels of distribution not subject to the proposed rule, USDA assumes that these intermediaries will

seek to keep their marketing options open for possible sales to subject retailers. USDA Economic Research Service (ERS) estimates of food disappearance for 2001 are used to measure the flow of covered commodities through intermediaries (Ref. 26). Food disappearance includes imports, which are impacted by the proposed rule, but does exclude exports, which are not.

For intermediaries, Table 4 shows total beef, pork, and lamb disappearance measured on a carcass-weight basis. Fresh, frozen, and canned fish and shellfish food disappearance is shown as edible meat weight. Total disappearance of fresh and frozen fruits and vegetables is computed from per capita consumption data measured on a farm-weight basis. Peanut disappearance is measured on a farmers' stock basis. The quantity of 713 million pounds shown in Table 4 is 32 percent of total peanut food disappearance to estimate peanut use in product forms subject to this proposed rule-'snack peanuts (23 percent) and roasted in-shell peanuts (9 percent) (Ref. 27).

For retailers, food disappearance figures are adjusted to estimate consumption through retailers as defined by the statute. For each covered commodity, disappearance figures are multiplied by 0.414, which represents the estimated share of production sold through retailers covered by this proposed rule. To derive this share, the factor of 0.629 is used to remove the 37.1 percent food service quantity share of total food in 2002 (Ref. 28). This factor is then multiplied by 0.658, which was the share of sales by supermarkets, warehouse clubs and superstores of food for home consumption in 2002 (Ref. 29). In other words, USDA assumes supermarkets, warehouse clubs and superstores represent the retailers as defined by PACA, and these retailers are estimated to account for 65.8 percent of retail sales of the covered commodities.

Other retail food outlets were assumed not to meet the statutory definition of a retailer under PACA. These latter outlets include convenience stores, other grocery stores, specialty food stores, mass merchandisers, other stores, home delivered and mail order, and farmers, processors, wholesalers, and other. USDA recognizes that not all supermarkets meet the statutory definition of a PACA retailer, while other retail outlets would meet the definition. USDA assumes that the relative volumes of covered commodities moving through supermarkets that are not PACA retailers offset the quantities of commodities moving though PACA retailers that are not supermarkets or warehouse clubs and superstores. USDA invites comments on the validity of this assumption.

Beef, pork, and lamb retail movement is measured on a retail-weight basis. Beef and lamb retailer estimates shown in Table 4 are retail-weight food disappearance figures for 2001 multiplied by the factor of 0.414. Unlike beef and lamb, however, much of the pork carcass typically is processed into products that would not be covered commodities under the proposed rule. For example, most of the ham and bacon are cured, and other cuts such as picnic meat are used for sausage and other processed products. Thus, an additional factor of 0.375 is used for pork, which is the estimate of the proportion of the retail-weight pork carcass that is used for fresh pork cuts that would be classified commodities under the proposed rule. The cuts assumed to be covered commodities are fresh ham, all of the loin cuts, spareribs, and the entire Boston butt. Estimates of the retail weight of these cuts and other cuts are taken from the National Pork Board (Ref. 30). USDA recognizes that some of these cuts will be processed into items not covered by the proposed rule, while other cuts will be sold in unprocessed forms that would be covered by the proposed rule. Nonetheless, USDA believes that 37.5 percent represents the best available estimate of the proportion of the retail pork carcass that would be covered. When combined with the 41.4 percent of commodities estimated to be sold by subject retailers, USDA estimates that 15.5 percent of estimated pork consumption would be covered by the proposed rule.

Estimated fresh, frozen, and canned fish and shellfish retailer volume shown in Table 4 is measured by edible meat weight. Fresh and frozen fruit and vegetable retailer volume is measured by farm weight. Retailer peanut volume is measured on a kernel basis, as the majority of peanuts sold at retail are without the shell.

Table 5 summarizes the upper range of direct, incremental costs that USDA believes firms will incur during the first year as a result of this proposed rule. These estimates are derived primarily from the available studies that addressed cost impacts of mandatory COOL. As discussed above, USDA believes that implementation of mandatory COOL will entail additional recordkeeping burden at the least and likely will entail other costs as well. Thus, to determine the upper range of implementation costs, we focus on available studies that attempt to account for costs beyond the recordkeeping burden.

TABLE 5.—UPPER RANGE ESTIMATES OF FIRST-YEAR IMPLEMENTATION COSTS PER AFFECTED INDUSTRY SEGMENT

[In millions of dollars]

	Beef	Pork	Lamb	Fish	F & V	Peanuts	Total
Producer	368	150	15	19	24	1	578
Intermediary	538	368	7	21	580	4	1,517
Retailer	780	155	9	119	720	3	1,787
Total	1,686	673	32	159	1,324	8	3,882

For beef producers, the range of Sparks/CBW cost estimates is $8.63 to $10.63 per head, with estimated costs of $4.88 per head for cow-calf producers and backgrounders and $3.75 to $5.75 per head for feedlots (Ref. 19). Davis (Ref. 21) estimates costs for beef producers of up to $15.30 per head, with $13.30 per head for cow-calf producers, $1 per head for stockers, and $1 per head for feedlots.

USDA believes that implementation costs per head for cow-calf producers will be relatively small because many cow-calf operators likely already maintain much of the information that will be needed to substantiate country of origin, such as breeding records, production records, and other business records. Costs for backgrounders, stockers, and feeders likely will be higher because of the need to track country of origin information on cattle from multiple sources. Animal identification tags, development of data bases, and additional hardware for accounting and tracking likely will be

required for many operations, particularly larger operations, to maintain country of origin information on cattle that move through their operations. Segregation of animals by origin may be implemented at some operations to facilitate recordkeeping, and additional labor likely will be needed to tag or otherwise identify animals, record information, and transfer information to purchasers. Considering all producer segments together, USDA adopts $10 per head as an upper range estimate of costs to cattle producers to implement the proposed rule. This estimate reflects USDA's expectation of relatively small implementation costs at the cow-calf level of production, but relatively higher costs each time cattle are resold. Typically, fed steers and heifers change hands two, three, or more times from birth to slaughter, and each exchange will require the transfer of country of origin information. Thus, total upper range costs for beef producers are estimated at $368 million.

For intermediaries in the beef sector, Sparks/CBW estimates costs of $15 per head to $18 per head for packers and processors of steers and heifers and $4 per head for cows and bulls for a total of $429 million to $546 million. Assuming commercial beef production of about 26 billion pounds for the 35 million head of cattle included in the Sparks/CBW estimates, estimated costs per pound are $0.017 to $0.021. Davis estimates costs of $11 million per plant for the 43 largest beef packing plants, resulting in a national total of $473 million. Assuming that these plants account for about 90 percent of total U.S. commercial beef production of about 27 billion pounds in 2002, this estimated cost works out to $0.0195 per pound.

USDA expects that intermediaries will face increased costs associated with tracking cattle and the covered beef commodities produced from these animals and then providing this information to subsequent purchasers, which may be other intermediaries or covered retailers. Plain and Grimes estimate that 88.7 percent of the supply of steaks and roasts and 75.5 percent of the beef trimmings used to produce ground beef for U.S. consumption were U.S. born, raised, and slaughtered beef in 2002 (Ref. 7). Thus, substantial portions of the beef supply are from sources not meeting the definition of U.S. born, raised, and slaughtered. Consequently, incremental costs for beef packers likely will include additional capital and labor expenditures to enable cattle from different origins to be segregated for slaughter, fabrication, and processing. Considering the costs likely to be faced by intermediaries in the beef sector, USDA adopts $0.02 per pound as an estimate of upper range costs, which is consistent with estimates from the available studies. Total upper range costs are thus estimated at $538 million.

Sparks/CBW estimates costs of $0.09 to $0.12 per pound for beef retailers, with a total of $805 million estimated for 8 billion pounds of beef sold assuming a cost of $0.10 per pound. FSIS estimates the cost of retail labeling at approximately $0.005 per package (Ref. 31), which is strictly the cost to apply a label and does not include costs such as recordkeeping or product segregation and tracking. Davis estimates total costs of $428,500 per retail store to implement mandatory COOL for beef alone, for a total of $4.6 billion nationally. Several supermarket retailers commented on the guidelines for voluntary country of origin labeling (67 FR 63367) and estimated costs to implement country of origin labeling at about $26,000 to $54,000 per store for all covered commodities (Refs. 32, 33, and 34). These estimates are an order of magnitude less than Davis' estimated cost per store, suggesting that the estimate of $428,500 per store for beef alone is substantially overstated. A comment from another retailer estimated costs of $0.075 to $0.08 per pound just for labeling and recordkeeping for beef, pork, and seafood at retail (Ref. 35). USDA adopts $0.10 per pound as an upper range estimate of implementation costs for beef retailers, for a total of $780 million. This figure reflects the costs for individual package labels, meat case segmentation, record keeping and information technology changes, labor, training, and auditing. In addition, there likely will be increased costs for in-store butcher department operations related to cutting, repackaging, and grinding operations.

Total costs for affected entities in the beef sector are thus estimated at $1.7 billion.

For pork producers, Sparks/CBW estimates costs at approximately $1 per head for all types of production systems. Sparks/CBW takes into account cost efficiencies associated with integrated production and processing systems and large-scale production. Hayes and Meyer estimate costs at $2 per head for all producers. Both the Sparks/CBW and the Hayes and Meyer studies appear to account credibly for the cost increases that pork producers are likely to encounter. Therefore, USDA adopts the midpoint of the per-head costs estimated by these two studies as the estimated upper range costs for pork producers. With annual slaughter of 100.3 million head, total costs for producers are estimated at $150 million.

For processors, Sparks/CBW estimates costs at $2 to $6 per head for non-integrated hog packers, $0.50 per head for vertically integrated hog production and packing systems (including costs associated with hog production), and $2 per head for sows and boars. In the Sparks/CBW study, vertically integrated systems account for approximately 26 percent of total slaughter hog production. For all processors, the Sparks/CBW study estimates total costs of $158 million to $450 million, assuming that half of the costs per head for vertically integrated production and packing accrue to the packing operation. Based on 2002 commercial pork production, the Sparks/CBW cost estimates range from $0.008 to $0.023 per pound. Hayes and Meyer estimate processing costs at $6.10 per head for all packers, which implies total costs of $612 million based on slaughter of 100.3 million head or costs of $0.031 per pound based on 2002 commercial pork production. USDA believes that upper range costs for all pork sector intermediaries (including handlers, processors, and wholesalers) will be similar to costs for beef sector intermediaries. USDA therefore estimates upper range costs for pork industry intermediaries at $0.02 per pound, for a total of $368 million.

For retailers, Sparks/CBW estimates costs for pork at $0.055 per pound at the retail store level and $0.02 to $0.03 per pound at the retail distribution center, for a total of $0.075 to $0.085 per pound at the retail level. Hayes and Meyer estimate retail costs at $1.87 per animal, or $0.01 per pound. As noted previously, FSIS estimates the cost of retail labeling at approximately $0.005 per package for the label alone (Ref. 31). Taking these sources into consideration, USDA estimates upper range costs for retailers of pork at $0.07 per pound. USDA's upper range per-pound cost estimate for pork is lower than for beef primarily to reflect the higher costs incurred by in-store grinding operations to produce ground beef. Although ground pork may also be produced in-store, most ground pork is processed into sausage and other products not covered by the proposed rule. Total estimated costs for pork retailers are $155 million. Total upper range costs for the pork sector are estimated at $673 million.

USDA did not identify any quantitative analyses of costs of mandatory COOL on the lamb industry, other than the paperwork burden estimates developed by VanSickle, *et al.*

(Ref. 5). To obtain an estimate of the upper range on implementation costs for lamb producers, USDA assumed that cost impacts on a per-unit basis would fall between costs facing beef producers and pork producers. Lamb production is similar to beef production in several ways. Both sheep and cattle are ruminants, with breeding stock and young animals typically raised on open pasture and rangelands, and slaughter animals typically finished on grain-based diets in confined feeding operations. Cows normally produce one calf, while sheep normally produce one or two lambs. In other respects, lamb production is similar to pork production. These two industries have similar numbers of producers—about 64,000 sheep and lamb producers versus 67,000 hog and pig producers (Table 1). Slaughter animals of both species are marketed at about the same age, about 6 months. Because both lambs and pigs are slaughtered at a relatively young age, the animals typically do not change ownership several times, as is most often the case with cattle. USDA believes that per-head costs for lamb producers will be considerably less than for beef producers but higher than for pork producers. USDA assumes that upper range costs per head for lamb producers will be $4.50 per head, which is three times the per-head costs assumed for pork producers and less than half the costs assumed for beef producers. Total upper range costs for lamb producers are estimated at $15 million.

USDA assumes that intermediaries in the lamb sector will face per-pound costs similar to costs faced by beef and pork sector intermediaries, which are estimated at $0.02 per pound. Total costs for lamb sector intermediaries are thus estimated at $7 million.

USDA believes that costs to retailers for lamb will be similar to costs borne for pork, which was estimated at $0.07 per pound. Total upper range costs for retailers of lamb are estimated at $9 million.

Summing the upper range estimates for producers, intermediaries, and retailers results in estimated upper range costs of $32 million for the lamb industry.

Regarding potential cost impacts of mandatory COOL on the fish and seafood sector, Sparks/CBW conducted the only quantitative assessment identified by USDA. Sparks/CBW estimates negligible costs for producers, $0.005 per pound for processors and wholesalers, and $0.05 to $0.07 per pound for retailers.

USDA believes that costs to fish and seafood producers will be higher than projected by Sparks/CBW, which estimates total costs of $1 million. For wild-caught fish, producers will need to maintain and transfer records on where fish are harvested and also transfer information on whether the vessel is U.S. flagged. Fish farming operations will need to maintain and transfer information regarding the location of production and of the origin of fish into the operation. USDA expects that fish and seafood producers will incur about half of the cost faced by processors and wholesalers. Producers will need to provide information on the products they sell while processors and wholesalers will need to track information on products that they both purchase and sell. Sparks/CBW estimates costs at $0.005 per pound for fish and seafood processors and wholesalers, so half of this amount is $0.0025 per pound. Total upper range costs for fish and seafood producers are thus estimated at $19 million.

USDA adopts $0.005 per pound as an upper range estimate of costs for intermediaries in the fish and seafood sector, which is the Sparks/CBW estimate for processors and wholesalers. Processors will need to collect country of origin information from producers, maintain this information, and supply this information to other intermediaries or directly to retailers. In addition, there may need to be segregation of the product before and after processing to facilitate tracking of country of origin identity. There will also be labeling costs associated with providing country of origin information on consumer-ready packs of frozen and fresh fish that are labeled by processors. Total upper range costs for fish and seafood intermediaries are thus estimated at $21 million.

At the retail level, Sparks/CBW estimates costs of $0.05 to $0.07 per pound for fish and seafood. USDA adopts the higher end of this range as an upper range estimate of costs for retailers of fish and seafood. The upper range estimate of $0.07 per pound is consistent with the costs estimated for pork and lamb at retail, and results in total upper range costs of $159 million for retailers of fish and seafood.

Total upper range costs for fish and seafood are estimated at $118 million.

As with fish and seafood, Sparks/CBW is the only quantitative study of the costs of mandatory COOL for perishable agricultural commodities of which USDA is aware. Sparks estimates total costs of $20 million for fruit and vegetable producers, $34 million for processors and wholesalers, and $1.5 billion to $3 billion for retailers.

USDA agrees with Sparks/CBW that costs of mandatory COOL for fruit and vegetable producers will be relatively small, but believes that the Sparks/CBW estimate is too low. Although producers maintain many of the types of records that will be required to substantiate U.S. origin claims, USDA believes that this information is not universally transferred by producers to purchasers of their products. Producers will have to supply this type of information in a format that allows handlers and processors to maintain country of origin information so that it can be accurately transferred to retailers. USDA estimates upper range costs of $0.00025 per pound for producers for fruits and vegetables to make and substantiate COOL claims, which equates to $0.01 for a 40 pound container. Total upper range costs for fruit and vegetable producers are estimated at $35 million.

As with fruit and vegetable producers, Sparks/CBW estimates relatively small costs for processors and wholesalers. USDA believes that fresh and frozen fruit and vegetable intermediaries will incur higher costs than those estimated by Sparks/CBW to implement the proposed rule. USDA believes that fruit and vegetable intermediaries will shoulder a sizeable portion of the burden of tracking and substantiating country of origin information. Intermediaries will need to obtain information to substantiate COOL claims by producers and suppliers; maintain COOL identity throughout handling, processing, and distribution; and supply retailer with COOL information through product labels and records. USDA estimates that the cost of these activities will be $0.005 per pound for fruit and vegetable sector intermediaries, resulting in total estimated costs of $580 million.

Sparks/CBW estimates costs of $0.03 to $0.06 per pound for retailers of fresh and frozen fruits and vegetables. USDA believes that costs at retail will be lower than estimated by Sparks/CBW. The Sparks/CBW study reflects information that was available subsequent to the release of the voluntary COOL guidelines, which included mixed products as covered commodities required to be labeled. Mixed products comprised of two or more covered commodities are defined as processed items in this proposed rule, and thus do not require country of origin labels. Based on comments received by USDA, costs for providing country of origin information for mixed products would be high. Examples of mixed products prepared at retail stores include mixed fruit cups, vegetable trays, and salads. Because these mixed products will not

require the tracking, identification, and recordkeeping that will be needed for covered commodities, USDA believes that per-unit costs for implementation of the proposed rule will be lower than would be the case under the voluntary COOL guidelines.

As discussed above, USDA believes that intermediaries will bear a portion of the burden of COOL tracking and labeling, which will lower implementation costs for retailers. USDA believes that virtually all frozen fruits and vegetables will be labeled by suppliers, thus imposing minimal incremental costs for retailers. In addition, a high proportion of fresh fruits and vegetables arrive at retail with labels or stickers that may be used to provide COOL information. USDA believes that fresh fruit and vegetable suppliers will provide COOL information on these labels and stickers, again imposing minimal incremental costs for retailers. Overall, USDA assumes that upper range costs for retailers will be $0.015 per pound of fresh and frozen fruits and vegetables, for a total of $720 million.

USDA identified no quantitative studies of the costs of mandatory labeling on the peanut sector. The implementation costs for peanut farmers are assumed to be similar to costs incurred by fruit and vegetable farmers, because both groups of growers likely maintain similar types of records and information that will be needed to substantiate country of origin claims. As with fruits and vegetables, peanut farmers deliver raw product to intermediaries for processing and processors distribute product to wholesalers for distribution to retail and other outlets. Lacking additional information on implementation costs, USDA anticipates that upper range costs for the peanut sector will be similar to costs faced by the fresh and frozen fruit and vegetable sector. Therefore, USDA estimates that costs per pound for each segment of the industry will be the same: $0.00025 for producers, $0.005 for intermediaries and $0.015 for retailers. As a result, USDA estimates upper range costs for the peanut industry of $1 million for producers, $4 million for intermediaries, and $3 million for retailers, for a total of $8 million.

USDA estimates total upper range incremental costs for this proposed rule of $589 million for producers, $1,517 million for intermediaries, and $1,787 million for retailers for the first year. Total upper range incremental costs for all supply chain participants are estimated at $3.9 billion for the first year.

There are wide differences in average estimated implementation costs for individual entities in different segments of the supply chain (Table 6). At the lower range, costs are estimated at an average of $180 per producer, $4,048 per intermediary, and $49,581 per retailer at the firm level. At the establishment level, lower range costs are estimated at an average of $180 per producer, $3,443 per intermediary, and $6,018 per retailer. With the exception of a small number of fishing operations, producer operations are single-establishment firms. Thus, average estimated costs per firm and per establishment are the same after rounding to the nearest dollar. Retailers subject to the proposed rule operate an average of just over eight establishments per firm. As a result, average estimated costs per retail firm also are just over eight times larger than average costs per establishment.

TABLE 6.—ESTIMATED FIRST-YEAR IMPLEMENTATION COSTS PER FIRM AND ESTABLISHMENT

	Lower range firm	Costs per establishment	Upper range firm	Costs per establishment
Producer	$180	$180	$443	$443
Intermediary	4,048	3,443	50,086	42,602
Retailer	49,581	6,018	396,089	48,073

At the upper range, average estimated implementation costs per producer remain relatively small at $443. Estimated costs for intermediaries are substantially larger, averaging $50,086 per firm and $42,602 per establishment. At an average of $48,073, retailers have the highest average estimated costs per establishment. Retailers also have the highest average estimated costs per firm, $396,089.

Whether at the lower or upper range of estimated costs, the costs per firm and per establishment represent industry averages for aggregated segments of the supply chain. Large firms and establishments likely will incur higher costs relative to small operations due to the volume of commodities that they handle and the increased complexity of their operations. In addition, different types of businesses within each segment are likely to face different costs. Thus, the range of costs incurred by individual businesses within each segment is expected to be large, with some firms incurring only a fraction of the average costs and other firms incurring costs many times larger than the average. Comments submitted by retailers on the voluntary guidelines (67 FR 63367) suggest that USDA's range of average estimated costs per store is reasonable. These firms estimated costs at approximately $26,000 to $54,000 per store, while USDA's range of estimated costs is approximately $6,000 to $48,000 per store (Refs. 32, 33, and 34).

Average costs per producer operation can be calculated according to the commodities that they produce (Table 7). Lower range costs average $190 for livestock operations, $103 for fish operations, and $101 for fruit, vegetable, and peanut operations. At the upper range, average estimated costs are lowest for peanut producers ($101) and highest for hog operations ($2,241).

TABLE 7.—ESTIMATED FIRST-YEAR IMPLEMENTATION COSTS PER PRODUCER OPERATION

Producer type	Lower range costs	Upper range costs
Cattle	$190	$356
Sheep	190	231
Hogs	190	2,241
Fish	103	252
Fruit & Vegetable	101	510
Peanuts	101	101
All	180	443

The spread between the estimated lower and upper range costs is greatest for hog operations. The primary reason for this is that the lower range cost estimate reflects estimated recordkeeping burden and depends primarily on the number of operations rather than the volume of production per operation.

The upper range cost estimate reflects estimated costs per head, and depends primarily on the volume of production

per operation. Because average production per hog operation is comparatively large relative to other types of producer operations, estimated upper range costs per hog producer operation are relatively larger.

The lower range and upper range cost estimates do not reflect an absolute lower bound and an absolute upper bound on costs that may be incurred by affected firms during the first year of implementation of this proposed rule. Based on the wide disparity in comments received on the voluntary COOL guidelines and this rulemaking, the range of implementation costs for the proposed rule span from virtually nothing to many billions of dollars. Thus, USDA developed a range of cost estimates that reflects its assessment of costs that are reasonably likely to be incurred during the first year of implementation.

USDA believes that the major cost drivers for the proposed rule occur when livestock or covered commodities are transferred from one firm to another, when livestock or covered commodities are commingled in the production or marketing process, and when products are assembled and then redistributed to retail stores. In part, we believe that some requirements of the proposed rule will be accomplished by firms using essentially the same processes and practices as are currently used, but with information on country of origin claims added to the processes. This adaptation generally would require relatively small marginal costs for recordkeeping and identification systems. In other cases, however, firms may need to revamp current operating processes to implement the proposed rule. For example, a processing or packing plant may need to sort incoming products by country of origin in addition to weight, grade, color, or other quality factors. This may require adjustments to plant operations, line processing, product handling, and storage. Ultimately, we anticipate that a mix of solutions will be implemented by industry participants to effectively meet the requirements of the proposed rule. Therefore, we anticipate that direct incremental costs for the proposed rule likely will fall in the middle to upper end of the estimated range of $582 million to $3.9 billion.

One regulatory alternative considered by AMS would be to narrow the definition of a processed food item, thereby increasing the scope of commodities covered by the proposed rule. This could be achieved, for example, by deleting from the definition of a processed food item ''a retail item derived from a covered commodity that has undergone a physical or chemical change, and has a character that is different from that of the covered commodity.''

There is insufficient information available to determine the cost impacts of expanding the number of items that would require country of origin labeling. There is, however, an indicator that provides a partial picture of how costs would increase with a wider scope of covered commodities. Altering the definition of a processed food item as indicated above would expand the scope of coverage to virtually all pork items, many of which would otherwise be excluded because they have undergone a physical or chemical change such as curing or smoking. This alternative would increase the scope of pork products required to be labeled at retail to virtually the entire carcass. As a result, the pounds of pork requiring retail labeling would increase from 2.2 billion pounds to 5.9 billion pounds. Upper range costs to retailers would increase by $258 million, a 166 percent cost increase to retailers and a 38 percent cost increase to the pork supply chain. Supply chains for the other covered commodities likely would experience similar types of cost increases.

Another alternative for narrowing the definition of a processed food item would be to strike from the definition the phrase ''a covered commodity that has been combined with * * * other covered commodities.'' In other words, mixed products would require country of origin labeling. This would greatly increase the burden of providing and substantiating country of origin information. When products are mixed, the burden of tracking and identifying labeling information rises as a multiple of the number of commodities in the product and the number of countries of origin for each commodity. Given the wide array of mixed products available, the range of countries of origin for the component ingredients and the lack of available data, quantifying the cost impacts of this alternative is not possible. Nonetheless, USDA expects that the costs would be large.

A converse regulatory alternative would be to broaden the definition of a processed food item, thereby decreasing the scope of commodities covered by the proposed rule. Accordingly, such an alternative would decrease implementation costs for the proposed rule. At the retail level and to a lesser extent at the intermediary level, cost reductions would be at least partly proportional to the reduction in the volume of production requiring retail labeling. Start-up costs for retailers and many intermediaries likely would be little changed by a narrowing of the scope of commodities requiring labeling because firms would still need to modify their recordkeeping, production, warehousing, distribution, and sales systems to accommodate the requirements of the proposed rule for those commodities that would require labeling under the proposed definitions. Ongoing maintenance and operational costs, however, likely would decrease in some proportion to a decrease in the number of items covered by the proposed rule. On the other hand, implementation costs for the vast majority of agricultural producers would not be affected by a change in the definition of a processed food item. This is because USDA assumes that virtually all affected producers would seek to retain the option of selling their products through supply channels for retailers subject to the proposed rule.

USDA expects that further broadening the definition of a processed food item would have a relatively small impact on the incremental cost estimates. Reducing the number of items requiring labeling by expanding the definition of a processed food item would have a minimal impact on the estimated costs for producers and intermediaries; altering this definition would have the greatest impact on estimated retailer costs. However, the definition developed for this rule has taken into account comments from retailers and has resulted in excluding products that would be more costly and troublesome for retailers to provide country of origin information.

In any case, little information is available to determine the extent to which the volume of covered commodities changes under alternative definitions of a processed food item. Therefore, there is little basis for quantifying the cost impacts of changing the definition.

Another alternative considered by AMS would be to require that suppliers provide an affidavit for each transaction to the immediate subsequent recipient certifying that the country of origin claims and, if applicable, designations of wild or farm-raised, being made are truthful and that the required records are being maintained. USDA does not have an estimate of the number of transactions that would be impacted. Assuming, however, costs of just $0.001 per pound of product sold by producers and intermediaries, and assuming that commodities are transferred at least twice between intermediaries, costs would increase by more than $500 million compared to the alternative of having no affidavits. This would nearly double USDA's estimated lower range

costs for the proposed rule, and increase the estimated upper range costs by more than 12 percent.

Effects on the economy: The previous section estimated the direct, incremental costs of the proposed rule to the affected firms in the supply chains for the covered commodities. While these costs are important to those directly involved in the production, distribution, and marketing of covered commodities, they do not represent net costs to the U.S. economy or net costs to the affected entities for that matter.

Several analyses have examined the potential market level impacts of the COOL legislation. Lusk and Anderson (Ref. 36) analyzed the effects of mandatory COOL on the U.S. livestock sector by varying the magnitude of the incremental increases in costs and the share of these direct costs incurred by the producer and the combined processor/retailer segments of the beef and pork sectors. There are similarities between their approach and the approach used herein, which is discussed below. In particular, Lusk and Anderson examined market effects stemming from a range of incremental increases in costs for the beef and pork sectors. Their analysis did not, however, include other covered commodities, such as fruit and vegetables, commodities directly affected by changes in livestock production, like corn and soybeans, or the effect of mandatory COOL legislation on the rest of the U.S. economy. Also, the model used by Lusk and Anderson to analyze the impacts on the poultry, beef and pork sectors together did not enable the effects of mandatory COOL on consumers or on U.S. welfare to be estimated.

Grier and Kohl (Ref. 37) examined the impact of mandatory COOL on the U.S. pork sector. Their analysis assessed impacts on employment, the environment, and hog production but did not do so in an integrated framework. As a result, their study does not account for the pork sector's adjustment to changes in consumption and production patterns. In addition, the major impacts of their study result from their assumption that mandatory COOL would cause U.S. imports of Canadian feeder pigs to cease. USDA finds this assumption to be implausible because there is no credible evidence that mandatory COOL, at least as outlined under the proposed rule, will lead to a cessation of the hog trade between Canada and the United States.

The results of these analyses, while instructive, are limited in their usefulness because they only represent the results from an incomplete or partial adjustment of the agriculture sector and the U.S. economy to mandatory COOL. These analyses are not comprehensive in their coverage of affected commodity sectors, focusing on the livestock sector for instance. Nor are the analyses comprehensive in their depiction of the linkages between the covered commodities and the rest of the U.S. economy and consequently their depiction of the overall economic adjustments that occur as a result of COOL. Consequently the results from these analyses are not readily comparable to USDA's analysis of the impacts of the proposed rule on the U.S. economy discussed below.

With respect to assessing the effect of this rule on the economy as a whole, it is important to understand that a significant portion of the costs directly incurred by the affected entities take the form of expenditures for additional production inputs, such as payments to others whether for increased hours worked or for products and services provided. As such, these direct, incremental costs to affected entities do not represent losses to the economy but rather transfers of money from one economic agent to another. As a result, the direct costs incurred by the participants in the supply chains for the covered commodities do not measure the impact of this rule on the economy as a whole. Instead, the relevant measure is the extent to which the proposed rule reduces the amount of goods and services that can be produced throughout the U.S. economy from the available supply of inputs and resources.

Even from the perspective of the directly affected entities, the direct, incremental costs do not present the whole picture. Initially, the affected entities will have to bear the full cost of implementing the proposed rule. However, over time as the economy adjusts to the requirements of the proposed rule, the burden facing suppliers will be reduced as their production level and the prices they receive change. What is critical in assessing the effect of this rule on the affected entities over the longer run is to determine the extent to which the entities are able to pass these costs on to others and consequently how the demand for their commodities is affected.

Conceptually, suppose that all the increases in costs from the proposed rule were passed on to consumers in the form of higher prices and that consumers continued to purchase the same quantity of the affected commodities from the same marketing channels. Under these conditions, the suppliers of these commodities would not suffer any net loss from the proposed rule even if the increases in their operating costs were quite substantial. However, other industries might face losses as consumers may spend less on other commodities. It is unlikely, however, absent the proposed rule leading to changes in consumers' preferences for the covered commodities, that consumers will maintain their consumption of the covered commodities in the face of increased prices. Rather, consumers will likely reduce their consumption of the covered commodities. The resulting changes in consumption patterns will in turn lead to changes in production patterns and the allocation of inputs and resources throughout the economy. The net result, once all these changes have occurred, is that the total amount of goods and services produced by the U.S. economy will be less than before.

To analyze the effect of the changes resulting from the proposed rule on the total amount of goods and services produced throughout the U.S. economy in a global context, USDA utilized a computable general equilibrium (CGE) model developed by ERS. The ERS CGE model includes all the covered commodities and the products from which they are derived, as well as non-covered commodities that will be indirectly affected by the rule, such as poultry and feed grains. Peanuts, however, are aggregated with oilseeds in the model, and there is no meaningful way to modify the model to account for the impacts of the proposed rule on peanut production, processing, and consumption. The peanut sector, however, accounts for only 0.2 percent to 0.3 percent of the total estimated incremental costs for all directly impacted entities. Thus, omitting the direct costs on the peanut sector is expected to have negligible impacts with respect to estimated impacts on the overall U.S. economy.

The ERS CGE model traces the impacts from an economic ''shock,'' in this case an incremental increase in operating costs, through the U.S agricultural sector and the U.S economy to the rest of the world and back through the inter-linking of economic sectors. By taking into account the linkages among the various sectors of the U.S. and world economies, a comprehensive assessment can be made of the economic impact on the U.S. economy of the proposed rule implementing COOL. The model reports resulting economic changes after a ten-year period of adjustment.

The results of this analysis indicate that the proposed rule implementing

COOL after the economy has had a period of ten years to adjust will have a more limited impact on the overall U.S. economy than the direct costs for the first year, alone, would suggest. Under the assumption that COOL will not change consumers' preferences for the covered commodities, USDA estimates that the overall costs to the U.S. economy of the proposed rule will, in terms of a reduction in consumers' purchasing power, range from $138 million to $596 million. This represents the cost to the U.S. economy after all transfers and adjustments in consumption and production patterns have occurred.

Overall costs to the U.S. economy after a decade of adjustment are significantly smaller than the first-year implementation costs to directly affected firms. This result does not imply that the implementation costs for directly affected firms have been substantially reduced from the initial estimates. While some of the increase in their costs will be offset by reduced production and higher prices over the longer term, the suppliers of the covered commodities will still bear direct implementation costs. Prior to full economic adjustment, economic impacts on directly affected firms in the short term are expected to be larger than impacts on the economy after adjustment has taken place.

USDA estimates of the overall costs to the U.S. economy are based on our estimates of the incremental increases in operating costs to the affected firms. The model does not permit supply channels for covered commodities that require country of origin information to be separated from supply channels for the same commodities that do not require country of origin labeling. Thus, the direct cost impacts must be adjusted to accurately reflect changes in operating costs for all firms supplying covered commodities. Table 8 reports these adjusted estimates in terms of their percentage of total operating costs for each of the directly impacted sectors. The percentages used are based on our estimate of the percentage change in operating costs for the entire supply channel and are adjusted between the various segments of each covered commodities' supply chain (producers, processors, importers, and retailers) based on USDA's estimate of how the costs of the regulation will be distributed among them. As a result, the cost changes shown in Table 8 only approximate the range of direct cost estimates previously described.

In addition, USDA assumes that domestic and foreign suppliers of the affected commodities located at the same level or segment of the supply chain face the same percentage increases in their operating costs. In reality, imported covered commodities likely would enjoy some measure of competitive advantage as a portion of those products already enter the United States with country of origin labels.

TABLE 8.—HIGH AND LOW INCREASE IN OPERATING COSTS BY SUPPLY CHAIN SEGMENT AND INDUSTRY

	Beef	Pork & lamb	Fish	Fresh produce
	Percent change			
Low Cost:				
Farm Supply:				
Domestic	0.50	0.25	0.25	0.25
Imported	0.50	0.25	0.25	0.25
Processing:				
Domestic	0.50	0.50	(1)	(1)
Imported	0.50	0.50	(1)	(1)
Retail:				
Domestic	0.50	0.50	0.50	0.75
Imported	0.50	0.50	0.50	0.75
High Cost:				
Farm Supply:				
Domestic	2.00	1.00	1.00	1.00
Imported	2.00	1.00	1.00	1.00
Processing:				
Domestic	2.00	2.00	(1)	(1)
Imported	2.00	2.00	(1)	(1)
Retail:				
Domestic	2.00	2.00	2.00	3.00
Imported	2.00	2.00	2.00	3.00

[1] Not applicable.

As discussed above, consumption and production patterns will change as the incremental increases in operating costs outlined above are passed on, at least partially, to consumers in the form of higher prices by the affected firms. The increases in the prices of the covered commodities will in turn cause exports and domestic consumption and ultimately domestic production to fall. The results of our analysis indicate that U.S. production of all the covered commodities combined will decline from 0.15 percent to 0.92 percent and that the overall price level for these commodities (a weighted average index of the prices received by suppliers for their commodities) will increase by 0.06 percent to 0.64 percent.

The structure of the model does not enable changes in net revenues to suppliers of the covered commodities to be determined. Likewise, the model cannot be used to determine the extent to which the reductions in production arise from some firms going out of business or all firms cutting back on their production. To provide an indication of what effect this will have on the suppliers of the covered commodities, USDA estimated changes in revenues using the model results. The result of this calculation shows that revenues to suppliers of the covered commodities will decline by $175 million to $195 million.

The costs of the proposed rule, however, will not be shared equally by all suppliers of the covered commodities. The distribution of the final costs of the rule will be determined by several factors in addition to the

direct costs of complying with the rule. These are the availability of substitute products not covered by the rule and the relative competitiveness of the affected suppliers with respect to other sectors of the U.S and world economies.

Although the increases in operating costs are the initial drivers behind the changes in consumption and production patterns resulting from this rule, they do not, as can be seen by examining Table 9, determine which commodity sector will be most affected. Table 9 contains the percentage changes in prices, production, exports, and imports for the three main segments of the marketing chain by covered commodity. The results are reported for the low and high end of the estimated range of increases in incremental costs. Table 9 also presents results for chicken, which is not a covered commodity but is a substitute for beef, lamb, and pork and as a result could be significantly affected by changes in consumption of these products. As mentioned previously, in the ERS CGE model peanuts are included with oilseed products. As a result they are not included in this analysis.

TABLE 9.—ESTIMATED IMPACT OF PROPOSED RULE ON U.S. PRODUCTION, PRICES AND TRADE OF IMPACTED SECTORS [1]

	Price	Production	Exports	Imports
	Percent change from the base year			
Low Incremental Cost:				
Fruits and Vegetables	0.11	−0.15	−0.17	−0.20
Cattle and Sheep	0.05	−0.14	−0.11	−0.06
Broilers	0.01	0.01	−0.00	0.02
Hogs	0.05	−0.07	−0.05	0.01
Beef and Lamb	0.07	−0.15	−0.05	−0.10
Chicken	0.01	0.04	0.01	0.03
Pork	0.06	−0.17	−0.09	−0.12
Fish	0.15	−0.26	−0.12	0.01
High Incremental Cost:				
Fruits and Vegetables	0.43	−0.49	−0.62	−0.26
Cattle and Sheep	0.24	−0.33	−0.37	−0.08
Broilers	0.02	0.03	−0.00	0.03
Hogs	0.07	−0.15	−0.16	−0.03
Beef and Lamb	0.27	−0.34	−0.40	−0.25
Chicken	0.11	0.07	−0.07	0.16
Pork	0.26	−0.39	−0.48	−0.08
Fish	0.64	−0.92	−1.04	0.22

Fish and fruit and vegetables are affected relatively more than the other covered commodities even though the increases in incremental costs summed over their entire supply chains are lower than the sum of the increases in incremental costs for the supply chains of the other covered commodities. This is because the demands for fruits and vegetables and fish are more responsive to changes in prices than are the demands for the other covered commodities.

Demand for U.S. fish production is particularly sensitive to increases in prices because in the model, U.S. fish suppliers have less of a competitive advantage over their foreign counterparts than do the U.S. suppliers of the other covered commodities. As a result, fish imports increase as a result of the estimated cost increases, causing U.S. production to fall more (one percent) than it would if imports of fish had declined similar to imports of all the other covered commodities.

U.S. poultry suppliers are also affected by the proposed rule even though they are not directly covered by the rule. This is because consumers will substitute chicken for beef and pork when their prices increase relative to the price of chicken. Consequently, the increases in pork and beef prices cause consumer demand to shift towards chicken. The resulting increase in demand for chicken causes the price of both chicken and broilers and ultimately their production to increase.

To put these impacts in more meaningful terms, the percentage changes reported in Table 9 were converted into changes in current prices and quantities produced, imported, and exported (Table 10). The base values used for calculating these changes are the projected values for 2003 as reported in the UDSA Agricultural Baseline Projections to 2012 (Ref. 38), except for fish, which comes from Fisheries of the United States, 2001 (Ref. 23). The base values in Table 10 vary from those reported in Table 4 because they are derived from projected levels reported in the USDA Agricultural Baseline for 2003, while values in Table 4 represent actual reported values for 2002 as compiled by the USDA's National Agricultural Statistical Service. Baseline values were used to accommodate the structure of the model.

Increases in prices for all covered commodities are small, less than one cent per pound. Production changes are similarly small, less than 100 million pounds for all covered commodities except fresh fruit and vegetables, which under the high cost ''shock'' declines by over a billion pounds. The declines in production of cattle and hogs mirroring the declines in beef and pork production fall by less than 200,000 head.

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Table 10. Estimated Changes in U.S. Production, Prices, and Trade for Affected Commodities

Indicator	Units	Base	Low Cost	High Cost
			Change	
U.S Production				
Fruits & Vegetables	Mil. Lbs.	204,291	-306	-1,001
Cattle	Thous. Hd.[a]	33,978	-48	-112
Broilers	Mil. Hd.[a]	8,621	1	3
Hogs	Thous. Hd.[a]	99,194	-69	-149
Beef	Mil. Lbs.	25,755	-39	-88
Chicken	Mil. Lbs.	32,647	13	23
Pork	Mil. Lbs.	19,442	-33	-76
Fish[b]	Mil. Lbs.	10,204	-27	-94
U.S. Price				
Fruits & Vegetables	$/Lb.[c]	0.14	0.0002	0.0006
Cattle	$/Cwt.	74.00	0.0370	0.1776
Broilers	$/Lb.	0.35	0.0000	0.0001
Hogs	$/Cwt.	37.00	0.0185	0.0259
Beef	$/Lb.	3.42	0.0024	0.0092
Chicken	$/Lb.	1.60	0.0002	0.0018
Pork	$/Lb.	2.69	0.0016	0.0070
Fish	$/Lb.[d]	0.41	0.0006	0.0026
U.S. Exports				
Fruits & Vegetables	Mil. Lbs.	60,856	-103	-377
Beef	Mil. Lbs.	2,530	-3	-10
Chicken	Mil. Lbs.	5,450	1	-4
Pork	Mil. Lbs.	1,620	-3	-8
Fish	Mil. Lbs.	2,565	-7	-27
U.S. Imports				
Fruits & Vegetables	Mil. Lbs.	89,186	-178	-232
Beef	Mil. Lbs.	3,305	-3	-8
Chicken	Mil. Lbs.	0	n.a	n.a
Pork	Mil. Lbs.	1,080	-1	-1
Fish	Mil. Lbs.	4,102	0	9

Sources: Base values for meat and fruits and vegetables come from USDA Agricultural Baseline Projections to 2012, Staff Report WAOB-2003-1. USDA, Office of the Chief Economist, 2003. Changes are derived from applying percentage changes obtained from the ERS CGE model to the base values. [a] Live animal estimates derived from baseline values for meat product using 2002 average dress weight for cattle, hogs and broilers. [b] Base values for fish come from Fisheries of the United States, 2001. National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 2002. [c] Fruit and vegetable price derived by dividing the total value of fruit and vegetable production by total quantity of fruit and vegetables produced as reported in USDA baseline for 2003. [d] Fish price derived by dividing total value of commercial and aquaculture production, excluding other, by total commercial and aquaculture production.

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The estimated changes in prices and production cause revenues for the fruit and vegetable industry to decline an estimated $12 million to $18 million. The estimated changes in production and prices cause revenues to beef cattle producers to fall $28 million and revenues from production and sale of beef to fall an estimated $70–$62 million dollars. In addition, revenues to hog production fall slightly, down $2 million to $8 million and revenues from production and sale of pork fall $58 million to $68 million. Finally, revenues to the fish industry fall $5 million to $12 million.

While revenues to the suppliers of the covered commodities fall, revenues to broiler and chicken suppliers increase. This is because the quantity of chicken demanded increases as consumers reduce their consumption of beef and pork in response to the increase in prices. The resulting changes in chicken and broiler production and prices, however, are relatively small (Table 10). The increase in both chicken and broiler prices is less than one cent, while broiler production increases by up to 1 million birds and chicken production increases by up to 23 million pounds. The increases in prices and production will cause revenues for broiler production to increase by an estimated $3 million to $8 million and revenues from chicken production to increase an estimated $26 to $94 million.

The increase in the prices of all affected commodities (except for fish) causes both exports and imports to decline (Table 10). Although these declines are small, they are for the most part smaller than the declines in U.S. production of these commodities, except for chicken where U.S. production increases.

The results presented here are based on one possible modeling framework. Consequently, the results depend on the representation of supply and demand relationships embedded in the ERS CGE model. Other types of modeling frameworks likely would yield different results. Unless these frameworks, however, are comprehensive in their coverage of both covered commodities and the linkages of these industries to the rest of the U.S. and world economy, their results would only represent the outcomes from a partial or incomplete adjustment of the economy to COOL. While their analysis may be useful for identifying the key factors for determining how specific industries or sub-sectors would be affected, they would not be useful for determining the effects of COOL on these industries and sub-sectors after the U.S. economy has completely adjusted.

Other CGE models that are as detailed in their coverage of the covered commodities as the ERS model may also provide different results than the ones presented here. In particular, the direction of change in the prices received by hog, cattle and fruit and vegetable producers may change if these models make a different assumption about the ability of firms to influence input and output prices. The ERS CGE model assumes that firms behave as though they have no influence on either their input or output prices. On the other hand, for example, a model that assumed that processors could influence their input and output prices could find that prices received by agricultural producers decreased because processors passed their cost increases down to their suppliers rather than increase the price they charged their customers.

Finally, the estimates of the economic impact of the proposed rule on the United States are based on the assumption that country of origin labeling does not shift consumer demand toward the covered commodities of U.S.-origin. This assumption is based on the earlier finding that there was no compelling evidence to support the view that mandatory country of origin labeling will increase the demand for U.S. products. Despite this lack of evidence, we examined how much of a shift or increase in demand for U.S.-origin labeled commodities would have to occur to offset the costs imposed on the economy by the proposed rule. We found that consumer demand for the covered commodities would have to increase from 0.4 percent to 2.1 percent to offset the costs to the economy of COOL as outlined in the proposed rule.

The 0.4 percent to 2.1 percent increase in demand for covered commodities represents the overall increase in demand from all outlets. If there were such a demand increase for domestically produced covered commodities, however, it would presumably occur at those retailers required to provide country of origin information. As previously discussed, USDA estimates the percentage share of covered commodities sold by retailers subject to this proposed rule at 41.4 percent of total consumption. This suggests that demand at covered retailers actually would have to increase by 1 percent to 5.1 percent, assuming no change in demand at other domestic outlets or in export demand.

As previously mentioned, our estimates of the overall economic effects of the proposed rule are derived from a CGE model developed by ERS. The results from this model show the changes in production and consumption patterns after the economy has adjusted to the incremental increase in costs (medium run results). In reality, such changes occur over time and the economy does not adjust instantaneously.

The results of this analysis describe and compare the old production and consumption patterns to the new ones, but do not reflect any particular adjustment process. In addition, these results assume that the only changes that are occurring in the agriculture sector or the economy as a whole are those that are driven by COOL. The purpose of using the ERS CGE model is not to forecast what prices and production will be over any particular time frame, but to explore the implications of COOL on the U.S. economy and capture the direction of the changes.

The ERS CGE model is global in the sense that all regions in the world are covered. Production and consumption decisions in each region are determined within the model following behavior that is consistent with economic theory. Multilateral trade flows and prices are determined simultaneously by world market clearing conditions. This permits prices to adjust to ensure that total demand equals total supply for each commodity in the world.

The general equilibrium feature of the model means that all economic sectors—agricultural and non-agricultural—are included. Hence, resources can move among sectors, thereby ensuring that adjustments in the feed grains and livestock sectors, for example, are consistent with adjustments in the processed sectors.

The model is static and this implies that gains (or losses) from stimulating (or inhibiting) investment and productivity growth are not captured. The model allows the existing resources to move among sectors, thereby capturing the effects of re-allocation of resources that results due to policy changes. However, because the model fixes total available resources it underestimates the long-run effects of policies on aggregate output.

The ERS CGE model uses data from the Global Trade Analysis Project (GTAP database, version 5.2). The database represents the world as of 1997 and includes information on macroeconomic variables, production, consumption, trade, demand and supply elasticities, and policy measures. The GTAP database includes 57 commodities and 76 country/regions. For this analysis, the regions were represented by the following country/regions: the United States, Canada,

Mexico, the European Union-15 (EU), Japan, Australia and New Zealand, South America (including Central America), and the rest of the World. The agricultural sector is subdivided into the following eight commodity aggregations: food grains (rice, wheat), feed grains (corn, barley, sorghum), oil crops (oilseeds, peanuts), vegetables and fresh fruits, other crops (sugar, cotton), bovine cattle and sheep, hogs and poultry. The non-agricultural sector is subdivided into the following seven commodity aggregations, cattle and sheep meats (beef, veal, lamb and mutton), pork, chicken, vegetable oils and fats, other processed food products, beverages and tobacco, and fish. The remaining sectors in the database were aggregated into one broad category of manufacturing.

Regulatory Flexibility Analysis

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

The proposed rule is the direct result of statutory obligations to implement the COOL provisions of the Farm Bill, which amended the Act by adding Subtitle D—Country of Origin Labeling.

The COOL provisions of the Farm Bill require USDA to issue regulations to implement a mandatory COOL program not later than September 30, 2004. The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. Specifically, the law imposes additional Federal labeling requirements for covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts.

Under current Federal laws and regulations, country of origin labeling is not universally required for the commodities covered by this rule. In particular, labeling of U.S. origin is not mandatory, and labeling of imported products at the consumer level is required only in certain circumstances. Thus, USDA has not identified any Federal rules that would duplicate or overlap with this proposed rule.

Many aspects of the mandatory COOL provisions are prescriptive and provide little regulatory discretion in rulemaking. The law requires a statutorily defined set of food retailers to label the country of origin of covered commodities. The law also prohibits USDA from using a mandatory identification system to verify the country of origin of covered commodities. However, the proposed rule provides flexibility in allowing market participants to decide how best to implement mandatory COOL in their operations. In addition, market participants other than those retailers defined by the statute may decide to sell products through marketing channels not subject to the proposed rule.

The objective of the proposed rule is to regulate the activities of retailers (as defined by the law) and their suppliers so that retailers will be able to fulfill their statutory obligations. The proposed rule requires retailers to provide country of origin information for all the covered commodities that they sell. It also requires all firms that supply covered commodities to these retailers to provide the retailers with the information needed for them to correctly label the covered commodities. In addition, all other firms in the supply chain for the covered commodities are potentially affected by the proposed rule, because country of origin information will need to be maintained and transferred along the entire supply chain. In general, the supply chains for the covered commodities consist of farms, fishing operations, processors, wholesalers, and retailers. A listing of the number of entities in the supply chains for each of the covered commodities can be found in Table 1.

Retailers covered by this proposed rule must meet the definition of a retailer as defined by PACA. The PACA definition includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Therefore, the number of retailers impacted by this rule is considerably smaller than the total number of retailers nationwide. In addition, there is no requirement that firms in the supply chain must supply their products to retailers subject to the proposed rule.

Because country of origin information will have to be passed along the supply chain and made available to consumers at the retail level, we assume that each participant in the supply chain as identified in Table 1 will likely encounter recordkeeping costs as well as changes or modifications to their business practices. Absent more detailed information about each of the entities within each of the marketing channels, USDA assumes that all such entities will be affected to some extent even though some producers and suppliers may choose to market their products through channels not subject to the requirements of this proposed rule. Therefore, USDA estimates that approximately 1,377,000 establishments owned by approximately 1,339,000 entities will be either directly or indirectly impacted by this rule.

This proposed rule potentially will have an impact on all participants in the supply chain, although the nature and extent of the impact will depend on the participant's function within the marketing chain. The rule likely will have the greatest impact on retailers and intermediaries (handlers, processors, wholesalers, and importers), while the impact on individual producers is likely to be relatively small.

USDA estimates direct incremental costs for the proposed rule will likely range from a total of $582 million to $3.9 billion.

There are two measures used by the Small Business Administration (SBA) to identify businesses as small: sales receipts or number of employees. In terms of sales, SBA classifies as small those grocery stores with less than $23 million in annual sales and specialty food stores with less than $6 million in annual sales (13 CFR 121.201). Warehouse clubs and superstores with less than $23 million in annual sales are also defined as small. SBA defines as small those agricultural producers with less than $750,000 in annual sales and fishing operations with less than $3.5 million in annual sales. Of the other businesses potentially impacted by the proposed rule, SBA classifies as small those manufacturing firms with less than 500 employees and wholesalers with less than 100 employees.

Retailers: While there are many potential retail outlets for the covered commodities, food stores, warehouse clubs, and superstores are the primary retail outlets for food consumed at home. In fact, food stores, warehouse clubs, and superstores account for 82.5 percent of all food consumed at home (Ref. 29). Therefore, the number of these stores provides an indicator of the number of entities potentially impacted by this proposed rule. The 1997 Economic Census (Ref. 39) shows there were 67,916 food store, warehouse club, and superstore firms operated for the entire year. Most of these firms,

however, would not be subject to the requirements of this proposed rule.

Retailers covered by this proposed rule must meet the definition of a retailer as defined by PACA. The number of such businesses is estimated from PACA data (Ref. 18). The PACA definition of a retailer includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Therefore, the number of retailers impacted by this rule is considerably smaller than the number of food retailers nationwide. USDA data indicate that there are 4,512 retail firms as defined by PACA that would thus be subject to the proposed rule. As explained below, most small food store firms have been excluded from mandatory COOL based on the PACA definition of a retailer.

The 1997 Economic Census data provide information on the number of food store firms by sales categories. Of the 67,916 food store, warehouse club, and superstore firms, USDA estimates that there are 66,868 firms with annual sales meeting the SBA definition of a small firm and 1,048 other firms. USDA has no information on the identities of these firms, and the PACA database does not identify firms by North American Industry Classification System code that would enable matching with Economic Census data. USDA assumes, however, that all or nearly all of the 1,048 large firms would meet the definition of a PACA retailer because most of these larger food retailers likely would handle fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Thus, USDA estimates that 77 percent (3,464 out of 4,512) of the retailers subject to the proposed rule are small. However, this is only 5.2 percent of the estimated total number of small food store retailers. In other words, an estimated 94.8 percent of small food store retailers would not be subject to the requirements of the proposed rule.

USDA estimates retailer costs under the proposed rule from a low of $224 million to a high of $1.8 billion. Costs per retail firm are estimated to range from a low of $49,581 to a high of $396,089. At the low end of the range of estimates, additional costs arise from setting up and maintaining a recordkeeping system, which USDA expects will be accomplished by modification of businesses' current recordkeeping systems. Average startup costs for setting up such recordkeeping systems are estimated at $1,309 and recurring costs are estimated at $48,272 per retail firm. On an establishment basis, average startup costs are estimated at $159 and recurring costs are estimated at $5,859 per retail establishment. At the high end of the range, implementation costs are estimated at $48,073 per retail establishment. Costs at the upper range of the range of estimates cannot be disaggregated into startup and recurring costs, but rather represents total first-year costs associated with implementation of the proposed rule. Retailers will face recordkeeping costs, costs associated with supplying country of origin information to consumers, costs associated with segmenting products by country of origin, and possibly additional handling costs. These cost increases may result in changes to retailer business practices. The proposed rule does not specify the systems that affected retailers must put in place to implement mandatory COOL. Instead, retailers will be given flexibility to develop their own systems to comply with the proposed rule. There are many ways in which the proposed rule's requirements may be met and firms will likely choose the least cost method in their particular situation to comply with the proposed rule.

Wholesalers: Any establishment that supplies retailers with one or more of the covered commodities will be required by retailers to provide country of origin information so that retailers can accurately supply that information to consumers. Of wholesalers potentially impacted by the proposed rule, SBA defines those having less than 100 employees as small. Importers of covered commodities will also be impacted by the proposed rule and are categorized as wholesalers in the data.

The 2000 Statistics of U.S. Businesses (Ref. 9) provides information on wholesalers by employment size. For meat and meat products wholesalers there is a total of 3,185 firms. Of these, 3,057 firms have less than 100 employees. This provides information that indicates that approximately 96 percent of meat wholesalers are considered as small firms using the SBA definition.

For fish and seafood wholesalers there are a total of 2,897 firms. Of these, 2,837 firms have less than 100 employees. Therefore, approximately 98 percent of the fish and seafood wholesalers could be considered as small firms.

For fresh fruit and vegetable wholesalers there are a total of 5,355 firms. Of these, 5,113 firms have less than 100 employees, resulting in approximately 95 percent of the fresh fruit and vegetable wholesalers being classified as small businesses.

In addition to specialty wholesalers that primarily handle a single covered commodity, there are also general-line wholesalers that handle a wide range of products. We assume that these general-line wholesalers likely handle at least one and possibly all of the covered commodities. Therefore, we include the number of general-line wholesale businesses among entities affected by the proposed rule.

The 2000 Statistics of U.S. Businesses provides information on general-line grocery wholesalers by employment size. There were 3,183 firms in total, and 2,983 firms had less than 100 employees. This results in approximately 94 percent of the general-line grocery wholesalers being classified as small businesses.

In general, over 94 percent of the wholesalers are classified as small businesses. This indicates that most of the wholesalers impacted by mandatory COOL may be considered as small entities as defined by SBA.

USDA estimates that intermediaries (importers and domestic wholesalers, handlers, and processors) will incur costs under the proposed rule ranging from a low of $123 million to a high of $1.517 billion. Costs per intermediary firm are estimated to range from a low of $4,048 to a high of $50,086. As with retailers, lower-range costs for intermediaries arise from setting up and maintaining a recordkeeping system. Average startup costs for setting up such recordkeeping systems are estimated at $1,309 and recurring costs are estimated at $2,739 per intermediary firm. Average startup costs are estimated at $1,113 and recurring costs are estimated at $2,330 per intermediary establishment. At the high end of the range, implementation costs are estimated at $42,602 per intermediary establishment. Costs at the upper range of estimates cannot be disaggregated into startup and recurring costs, but rather represent total first year costs associated with implementation of the proposed rule.

Wholesalers will encounter increased costs in complying with the mandatory COOL. Wholesalers will likely face increased recordkeeping costs, costs associated with supplying country of origin information to retailers, costs associated with segmenting products by country of origin, and possibly additional handling costs. Some of the comments received on the voluntary guidelines (67 FR 63367) from wholesalers and retailers have indicated that retailers may choose to source covered commodities from a single supplier that procures the covered commodity from only one country in an attempt to minimize the costs associated with complying with mandatory COOL. These changes in business practices

could lead to the further consolidation of firms in the wholesaling sector. The proposed rule does not specify the systems that affected wholesalers must put in place to implement mandatory COOL. Instead, wholesalers will be given flexibility to develop their own systems to comply with the proposed rule. There are many ways in which the proposed rule's requirements may be met. In addition, wholesalers have the option of supplying covered commodities to retailers or other suppliers that are not covered by the proposed rule.

Manufacturers: Any manufacturer that supplies retailers or wholesalers with a covered commodity will be required by retailers to provide country of origin information to retailers so that the information can be accurately supplied to consumers. Most manufacturers of covered commodities will likely print country of origin information on retail packages supplied to retailers. Of the manufacturers potentially impacted by the proposed rule, SBA defines those having less than 500 employees as small.

The 2000 Statistics of U.S. Businesses (Ref. 9) provides information on manufacturers by employment size. For livestock processing and slaughtering there is a total of 3,098 firms. Of these, 2,981 firms have less than 500 employees. This suggests that 96 percent of livestock processing and slaughtering operations would be considered as small firms using the SBA definition.

For seafood product preparation and packaging there is a total of 741 firms. Of these, 714 have less than 500 employees and thus, 96 percent are considered to be small firms.

For frozen fruit, juice, and vegetable manufacturers there is a total of 163 firms. There are 131 of these firms that are considered to be small. This suggests that 80 percent of the frozen fruit, juice, and vegetable manufacturers would be considered as small using the SBA definition.

There are a total of 140 roasted nuts and peanut butter manufacturers. Of these 140 firms, 121 could be considered as small. This results in 86 percent of the operations being considered small.

In general, approximately 95 percent of the manufacturers are classified as small businesses. This indicates that most of the manufacturers of covered commodities impacted by the proposed rule would be considered as small entities as defined by SBA.

Manufacturers are included as intermediaries and additional costs for these firms are discussed in the previous section addressing wholesalers. Manufacturers of covered commodities will encounter increased costs in complying with the mandatory COOL. Manufacturers like wholesalers will likely face increased recordkeeping costs, costs associated with supplying country of origin information to retailers, costs associated with segmenting products by country of origin, and possibly additional handling costs. Some of the comments received on the voluntary guidelines (67 FR 63367) from manufacturers have indicated that they may limit the number of sources from which they procure raw products. These changes in business practices could lead to the further consolidation of firms in the manufacturing sector. The proposed rule does not specify the systems that affected manufacturers must put in place to implement mandatory COOL. Instead, manufacturers will be given flexibility to develop their own systems to comply with the proposed rule. There are many ways in which the proposed rule's requirements may be met.

Producers: Producers of the covered commodities fish, perishable agricultural commodities, and peanuts are directly impacted by this proposed rule. Producers of cattle, hogs, and sheep, while not directly covered by this rule will nevertheless be impacted because covered meat commodities are produced from livestock. Whether directly or indirectly impacted, these producers will more than likely be required by handlers and wholesalers to create and maintain country of origin information and transfer it to them so that they can readily transfer this information to retailers.

SBA defines a small agricultural producer as having annual receipts less than $750,000. The 1997 Census of Agriculture (Ref. 16) shows there are 1,011,809 farms that raise beef cows, and USDA estimates that 20,696 of these have annual receipts greater than $750,000. Thus, at least 98 percent of these beef cattle farms would be classified as small businesses according to the SBA definition. Similarly, an estimated 93 percent of hog farms would be considered as small and an estimated 99 percent of sheep and lamb farms would be considered as small.

Based on 1997 Census of Agriculture information, 92 percent of vegetable farms, 94 percent of fruit, nut, and berry farms, and 91 percent of peanut farms could be classified as small.

Based on 1998 Census of Aquaculture data, USDA estimates that at least 90 percent of fish and shellfish farming operations are small.

Similar information on fishing operations is not known to exist. However, it is assumed that the majority of these producers would be considered as small businesses.

At the production level, agricultural producers and fish harvesters will need to create, if necessary, and maintain records to establish country of origin information for the products they sell. This information will need to be conveyed as the products move through the supply chains. In general, additional producer costs include the cost of establishing and maintaining a recordkeeping system for the country of origin information, animal or product identification, and labor and training. Based on USDA's knowledge of the affected industries as well as comments received on the voluntary guidelines (67 FR 63367), USDA believes that producers already have much of the information available that could be used to substantiate country of origin. Cattle, hog, and lamb and sheep producers may have a slightly larger burden for recordkeeping than fruit, vegetable, and peanut producers because animals can be born in one country and fed and slaughtered in another country.

The costs for producers are expected to be relatively limited and should not have a larger impact on small producers than large producers. Producer costs are estimated to range from $235 million to $578 million, or an estimated $180 to $443 per firm. As with other affected businesses, lower-range costs for producers arise from setting up and maintaining a recordkeeping system. Average startup costs for setting up such recordkeeping systems are estimated at $60 and recurring costs are estimated at $121 per producer operation. In the case of producers, the firm and the establishment are considered as one and the same, with the exception of a small number of fishing operations. Thus, costs per firm and per establishment are the same after rounding to the nearest dollar. At the high end of the range, implementation costs are estimated $443 per producer operation. Costs at the upper range of estimates cannot be disaggregated into startup and recurring costs, but rather represent total first year costs associated with implementation of the proposed rule.

Economic impact on small entities: Information on sales or employment is not available for all firms or establishments shown in Table 1. However, it is reasonable to expect that this proposed rule will have a substantial impact on a number of small businesses. At the wholesale and retail levels of the supply chain, the efficiency of these operations may be impacted as

products are segregated in receiving, storage, processing, and shipping operations. For packers and processors handling products from multiple origins, there may also be a need to operate separate shifts for processing products from different origins, or to split processing within shifts. In either case, costs are likely to increase. Records will need to be maintained to ensure that accurate country of origin information is retained throughout the process and to permit compliance and enforcement reviews.

Even if only domestic origin products or products from a single country of origin are handled, there may be additional procurement costs to source supplies from a single country of origin. Additional procurement costs may include higher transportation costs due to longer shipping distances and higher acquisition costs due to supply and demand conditions for products from a particular country of origin, whether domestic or foreign.

These additional costs may result in a number of consolidations within the processor, manufacturer, and wholesaler sectors for these covered commodities. Also, to comply with the proposed rule, retailers may seek to limit the number of entities from which they purchase covered commodities.

Additional alternatives considered: As previously mentioned, the COOL provisions of the 2002 Farm Bill leaves very little regulatory discretion in defining who is directly covered by this rule. The law explicitly identifies those retailers required to provide their customers with country of origin information for covered commodities (namely, retailers as defined by PACA).

The law also requires that any person supplying a covered commodity to a retailer provide information to the retailer indicating the country of origin of the covered commodity. Again, the law provides no discretion regarding this requirement for suppliers of covered commodities to provide information to retailers.

The proposed rule has no mandatory requirement, however, for any firm other than statutorily defined retailers to make country of origin claims. In other words, no producer, processor, wholesaler, or other supplier is required to make and substantiate a country of origin claim provided that the commodity is not ultimately sold in the form of a covered commodity at the establishment of a retailer subject to the proposed rule. Thus, for example, a processor and its suppliers may elect not to maintain country of origin information nor to make country of origin claims, but instead sell products through marketing channels not subject to the proposed rule. Such marketing alternatives include foodservice, export, and retailers not subject to the proposed rule. USDA estimates that 41.4 percent of U.S. food sales occur through retailers subject to the proposed rule, with the remaining 58.6 percent sold by retailers not subject to the proposed rule or sold as food away from home. Additionally, food product sales into export markets provide marketing opportunities for producers and intermediaries that are not subject to the provisions of the proposed rule.

The law provides no discretionary authority for granting differing implementation timetables that could be used to ease the burdens on small entities. The law states that retailers subject to the statute are to label covered commodities with country of origin information beginning September 30, 2004. For retailers to meet this requirement, their suppliers will need to provide the necessary information to the retailers on or before this date. Retailers and their suppliers also will need to have the information and records necessary to substantiate all country of origin claims ultimately made at subject retailers. In short, the supply chains for the covered commodities will need to have the necessary systems and records in place to enable valid, verifiable country of origin labeling by retailers of covered commodities beginning September 30, 2004.

The proposed rule does not dictate systems that firms will need to put in place to implement the proposed requirements. Thus, different segments of the affected industries will be able to develop their own least-cost systems to implement COOL requirements. For example, one firm may depend primarily on manual identification and paper recordkeeping systems, while another may adopt automated identification and electronic recordkeeping systems.

The proposed rule has no requirements for firms to report to USDA. Compliance audits will be conducted by USDA at firms' places of business. As stated previously, required records may be kept by firms in the manner most suitable to their operations and may be hardcopy documents, electronic records, or a combination of both. In addition, the proposed rule provides flexibility regarding where records may be kept. Such flexibility should reduce costs for small entities to comply with the proposed rule.

In effect, the proposed rule is a performance standard rather than a design standard. The proposed rule requires that covered commodities at subject retailers be labeled with country of origin information, that suppliers of covered commodities provide such information to retailers, and that retailers and their suppliers maintain records and information sufficient to verify all country of origin claims. The proposed rule provides flexibility regarding the manner in which country of origin information may be provided by retailers to consumers. The proposed rule provides flexibility in the manner in which required country of origin information is provided by suppliers to retailers, and in the manner in which records and information are maintained to substantiate country of origin claims. Thus, the proposed rule provides the maximum flexibility practicable to enable small entities to minimize the costs of the proposed rule on their operations.

Paperwork Reduction Act

This proposed rule announces that AMS is requesting OMB approval for a new information collection and contains information collection provisions that are subject to review by OMB under PRA (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual recordkeeping burden.

Title: Recordkeeping and Records Access Requirements for Producers and Food Facilities.

OMB Number: 0581-new.

Type of Request: New collection.

Expiration Date: Three years from the date of approval.

Abstract: The country of origin labeling provision in the 2002 Farm Bill requires that specified retailers inform consumers as to the country of origin of covered commodities. This proposed rule requires that records and other documentary evidence used to substantiate an origin claim must, upon request, be made available to USDA representatives in a timely manner during normal business hours and at a location that is reasonable in consideration of the products and firm under review. Any person engaged in the business of supplying a covered commodity to a retailer (*i.e.*, including but not limited to growers, distributors, handlers, packers, and processors), whether directly or indirectly, must make country of origin information available to the retailer and must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction, for a period of 2 years from the date of the transaction. For an imported covered commodity, the

importer of record as determined by CBP, must ensure that records: (1) Provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient, and (2) substantiate country of origin claims and, if applicable, designations of wild or farm-raised and must maintain such records for a period of 2 years from the date of the transaction. Records and other documentary evidence (*e.g.*, shipping receipt from central warehouse) relied upon at the point of sale to establish a product's country of origin and, if applicable, designation of wild or farm-raised, must be maintained at the point of sale or otherwise be reasonably available to any duly authorized representative of USDA at the facility for at least 7 days following the retail sale of the product. In addition, records which identify the retail supplier, the product unique to that transaction, and the country of origin information, and, if applicable, designation of wild or farm-raised, must be maintained for a period of 2 years from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, or at a warehouse, central office or other off-site location.

Description of Recordkeepers: Individuals who supply covered commodities, whether directly to retailers or indirectly through other participants in the marketing chain, are required to establish and maintain country of origin information for the covered commodities and supply this information to retailers. As a result, producers, handlers, manufacturers, wholesalers, importers, and retailers of covered commodities will be impacted by this proposed rule.

Burden: USDA estimates that approximately 1,377,000 establishments owned by approximately 1,339,000 firms would be either directly or indirectly impacted by this rule. In general, the supply chain for each of the covered commodities includes agricultural producers or fish harvesters, processors, wholesalers, importers, and retailers. Imported products may be introduced at any level of the supply chain. Other intermediaries, such as auction markets, may be involved in transferring products from one stage of production to the next. USDA estimates that the proposed rule's paperwork burden will be incurred by the number and types of firms and establishments listed in Table 11 of this document.

TABLE 11.—COSTS ASSOCIATED WITH PAPERWORK BURDEN

Type	Firms	Initial costs	Establishments	Maintenance costs	Total costs
Producers:					
Cattle & Calves	1,032,670	61,847,680	1,032,670	133,951,509	195,799,189
Sheep & Lambs	64,170	3,843,208	64,170	8,323,732	12,166,940
Hogs & Pigs	67,150	4,021,683	67,150	8,710,279	12,731,962
Farm-Raised Fish & Shellfish	3,540	212,014	3,540	459,187	671,201
Fishing	76,499	4,581,605	76,452	3,305,62	7,887,230
Fruits & Vegetables	47,596	2,850,574	47,596	1,967,230	4,817,804
Peanut Farming	12,221	731,928	12,221	505,116	1,237,045
Intermediaries:					
Stockyards, Dealers & Market Agencies	7,775	10,177,475	7,775	6,489,500	16,666,975
Livestock Processing & Slaughtering	3,098	4,055,282	3,358	56,055,927	60,111,209
Meat & Meat Product Wholesale	3,185	4,169,165	3,305	2,758,559	6,927,724
Seafood Product Preparation & Packaging	741	969,969	823	686,927	1,656,896
Fish & Seafood Wholesale	2,897	3,792,173	2,980	2,487,294	6,279,467
Frozen Fruit, Juice & Vegetable Mfg	163	213,367	257	214,508	427,875
Fresh Fruit & Vegetable Wholesale	9,026	11,815,034	12,879	10,749,617	22,564,651
Roasted Nuts & Peanut Butter Mfg	140	183,260	159	132,711	315,971
Peanut Wholesalers	83	108,647	83	69,277	177,924
General Line Grocery Wholesalers	3,183	4,166,547	3,993	3,332,807	7,499,354
Retailers	4,512	5,906,208	37,176	217,802,585	223,708,793
Totals:					
Producers	1,303,846	78,088,693	1,303,799	157,222,678	235,311,371
Handlers, Processors, & Wholesalers	30,291	39,650,919	35,612	82,977,128	122,628,047
Retailers	4,512	5,906,208	37,176	217,802,585	223,708,793
Grand Total	1,338,649	123,645,820	1,376,587	458,002,391	581,648,211

The impacted firms and establishments will broadly incur two types of costs. First, firms will incur initial or start-up costs to comply with the proposed rule. USDA assumes that initial costs will be borne by each firm, even though a single firm may operate more than one establishment. Second, enterprises will incur additional recordkeeping costs associated with storing and maintaining records on an ongoing basis. USDA assumes that these activities will take place in each establishment operated by each affected business.

With respect to initial recordkeeping costs, USDA believes that most producers currently maintain many of the types of records that would be needed to substantiate country of origin claims. However, producers do not typically record or pass along country of origin information to subsequent purchasers. Therefore, producers will incur some additional incremental costs to record, maintain, and transfer country of origin information to substantiate country of origin claims made at retail. Because much of the necessary recordkeeping is already developed during typical farm, ranch, and fishing operations, USDA estimates that the incremental costs for producers to supplement existing records with country of origin information will be relatively small. Examples of initial or start-up costs would be any additional recordkeeping burden needed to record the required country of origin information and transfer this information to handlers, processors, wholesalers, or retailers.

USDA estimates that producers will need 4 hours to establish a system for organizing records to carryout the

purposes of these regulations. This additional time would be required to modify existing recordkeeping systems to incorporate any added information needed to substantiate country of origin claims. Although not all farm products ultimately will be sold at retail establishments covered by this proposed rule, USDA assumes that virtually all producers will wish to keep their marketing options as flexible as possible. Thus, USDA assumes that all producers of covered commodities or livestock (in the case of the covered meat commodities) will establish recordkeeping systems sufficient to substantiate country of origin claims. USDA also recognizes that some operations will require substantially more than 4 hours to establish their recordkeeping systems. In particular, USDA believes that livestock backgrounders, stockers, and feeders will face a greater burden in establishing recordkeeping systems. These types of operations will need to track country of origin information for animals brought into the operation as well as for animals sold from the operation, increasing the burden of substantiating country of origin claims. Conversely, operations such as fruit and vegetable farms that produce only U.S. products likely will require little if any change to their existing recordkeeping systems in order to substantiate country of origin claims. Overall, USDA believes that 4 hours represents a reasonable estimate of the average additional time that will be required across all types of producers.

For producers, USDA assumes that the added work needed to initially set up a recordkeeping system for country of origin information is primarily a bookkeeping task. This task may be performed by independent bookkeepers, or in the case of operations that perform their own bookkeeping, will require equivalent skills. The Bureau of Labor Statistics (BLS) (Ref. 40) publishes wage rates for bookkeepers, accounting, and auditing clerks. USDA assumes that this wage rate represents the cost for producers to hire an independent bookkeeper. In the case of producers who currently perform their own bookkeeping, USDA assumes that this wage rate represents the opportunity cost of the producers' time for performing these tasks. The January 2001 wage rate, the most recent data available, is estimated at $11.94 per hour. For this analysis, an additional 25.4 percent is added to the wage rate to account for total benefits which includes social security, unemployment insurance, workers compensation, etc. The estimate of this additional cost to employers is published by the BLS (Ref. 40). At 4 hours per firm and a cost of $14.97 per hour, initial recordkeeping costs to producers are estimated at approximately $78 million to modify existing recordkeeping systems in order to substantiate country of origin claims.

The recordkeeping burden on handlers, processors, wholesalers, and retailers is expected to be more complex than the burden most producers face. These operations will need to maintain country of origin information on the covered commodities purchased and subsequently furnish that information to the next participant in the supply chain. This will require adding additional information to a firm's bills of lading, invoices, or other records associated with movement of covered commodities from purchase to sale. Similar to producers, however, USDA believes that most of these operations already maintain many of the types of necessary records in their existing systems. Thus, USDA assumes that country of origin information will require only modification of existing recordkeeping systems rather than development of entirely new systems.

The Label Cost Model Developed for FDA by RTI International (Refs. 41 and 42) is used to estimate the cost of including additional country of origin information to an operation's records. USDA assumes a limited information, one-color redesign of a paper document will be sufficient to comply with the proposed rule's recordkeeping requirements. The number of hours required to complete the redesign is estimated to be 29 with an estimated cost at $1,309 per firm. While the cost will be much higher for some firms and lower for others, USDA believes that $1,309 represents a reasonable average cost for all firms. Based on this, USDA estimates that the initial recordkeeping costs to intermediaries such as handlers, processors, and wholesalers (importers are included with wholesalers) will be approximately $40 million, and initial recordkeeping costs at retail will be approximately $6 million.

The total initial recordkeeping costs for all firms are thus estimated at approximately $124 million.

In addition to these one-time costs to establish recordkeeping systems, enterprises will incur additional recordkeeping costs associated with storing and maintaining records. These costs are referred to as maintenance costs in Table 11. Again, the marginal cost for producers to maintain and store any additional information needed to substantiate country of origin claims is expected to be relatively small.

For wild fish harvesters, fruit and vegetable producers, and peanut producers, country of origin generally is established at the time that the product is harvested, and thus there is no need to track country of origin information throughout the production lifecycle of the product. This group of producers is estimated to require an additional 4 hours a year, or 1 hour per quarter, to maintain country of origin information.

Compared to wild fish harvesters, fruit and vegetable producers, and peanut producers, USDA expects that fish farmers and livestock producers will incur higher costs to maintain country of origin information. Wild fish, fruits, vegetables, and peanuts are generally harvested once and then shipped by the producer to the first handler. In contrast, farm-raised fish and livestock can and often do move through several geographically dispersed operations prior to final sale for processing or slaughter. Cattle, for example, typically change ownership between 2 to 3 times before they are slaughtered and processed. Fish and livestock may be acquired from other countries by U.S. producers, complicating the task of tracking country of origin information. Because animals are frequently sorted and regrouped at various stages of production and may change ownership several times prior to slaughter, country of origin information will need to be maintained on animals as they move through their lifecycle. Thus, USDA expects that the recordkeeping burden for fish farmers and livestock producers will be higher than it will be for producers of other covered commodities. USDA estimates that these producers will require an additional 12 hours a year, or 1 hour per month, to maintain country of origin records. Again, this is an average for all enterprises. Some will require substantially more time, while others will require little additional time to maintain country of origin information.

USDA assumes that farm labor will primarily be responsible for maintaining country of origin information at producers' enterprises. NASS data (Ref. 43) are used to estimate average farm wage rates—$8.62 per hour for livestock workers and $8.24 per hour for other crops workers. Applying the rate of 25.4 percent to account for benefits results in an hourly rate of $10.81 for livestock workers and $10.33 for other crops workers. (Wage rates for fish workers were unavailable, so the average wage rate for livestock workers is used.) Assuming 12 hours of labor per year for livestock and farmed fish operations and 4 hours per year for all other

operations results in estimated total annual maintenance costs to producers of $157 million.

USDA expects that intermediaries such as handlers, processors, and wholesalers will face higher costs per enterprise to maintain country of origin information compared to costs faced by producers. Much of the added cost is attributed to the larger average size of these enterprises compared to the average producer enterprise. In addition, these intermediaries will need to track products both coming into and going out of their businesses.

With the exception of livestock processing and slaughtering establishments, USDA estimates the maintenance burden hours for country of origin recordkeeping to be 52 hours per year per establishment. For this part of the supply chain, the recordkeeping activities are on-going and are estimated to require an additional hour a week. USDA expects, however, that livestock processing and slaughtering enterprises will experience a more intensive recordkeeping burden. These enterprises disassemble carcasses into many individual cuts, each of which must maintain its country of origin identity. In addition, businesses that produce ground beef, lamb, and pork may commingle product from multiple origins, requiring careful tracking and recordkeeping to substantiate the country of origin information provided to retailers. Maintenance of the recordkeeping system at these establishments is estimated to total 1,040 hours per establishment, or 20 hours per week.

Maintenance activities will include inputting, tracking, and storing country of origin information for each covered commodity. Since this is mostly an administrative task, USDA estimates the cost using the BLS wage rate for administrative support occupations ($12.80 per hour with an additional 25.4 percent added to cover overhead costs for a total of $16.05 per hour). This occupation category includes stock and inventory clerks and record clerks. Coupled with the assumed hours per establishment, the resulting total annual maintenance costs to handlers, processors, and wholesalers and other intermediaries are estimated at approximately $83 million.

Retailers will need to supply country of origin information for each covered commodity sold at each store. Therefore, additional recordkeeping maintenance costs are believed to impact each establishment. Because tracking of the covered commodities will be done daily, USDA believes that an additional hour of recordkeeping activities for country of origin information will be incurred daily at each retail establishment. This results in an estimated 365 additional hours per year per establishment. Using the BLS wage rate for administrative support occupations ($12.80 per hour with an additional 25.4 percent added to cover overhead costs for a total of $16.05 per hour) results in total estimated annual maintenance costs to retailers of $218 million.

The total maintenance recordkeeping costs for all enterprises are thus estimated at approximately $458 million.

The total first-year recordkeeping burden is calculated by summing the initial and maintenance costs. The total recordkeeping costs are estimated for producers at approximately $235 million; for handlers, processors, and wholesalers at approximately $123 million; and for retailers at approximately $224 million. USDA estimates the total recordkeeping cost for all participants in the supply chain for covered commodities at $582 million for the first year, with subsequent maintenance costs of $458 million per year.

The recordkeeping burden estimated for the voluntary country of origin guidelines (67 FR 63367) was $2 billion for the first year. There are several reasons that the estimated recordkeeping burden for this proposed rule is substantially lower. First, the estimated number of affected entities is fewer due to the use of less aggregated data to estimate the numbers of impacted firms and establishments. Second, the estimated wage rates are lower to reflect more accurately the types of work skills expected to be needed to implement and maintain the records needed for this proposed rule. Third, the estimated number of labor hours is reduced overall as a result of reassessing expected hours needed to carry out recordkeeping tasks associated with this proposed rule.

Annual Reporting and Recordkeeping Burden for the First Year (Initial): Public reporting burden for this initial recordkeeping set up is estimated to average 4.7 hours per year per individual recordkeeper.

Estimated Number of Firms Recordkeepers: 1,338,649.

Estimated Total Annual Burden: 6,224,671 hours.

Annual Reporting and Recordkeeping Burden (Maintenance): Public reporting burden for this recordkeeping storage and maintenance is estimated to average 24.2 hours per year per individual recordkeeper.

Estimated Number of Establishments Recordkeepers: 1,376,634.

Estimated Total Annual Burden: 33,294,392 hours.

AMS is committed to implementation of the Government Paperwork Elimination Act (GPEA) to provide the public with the option to submit or transact business electronically to the extent practicable. This new information collection has no forms and is only for recordkeeping purposes. Therefore, the provisions of an electronic submission alternative is not required by GPEA.

AMS is soliciting comments from all interested parties concerning these recordkeeping requirements. Comments are specifically invited on: (1) Whether the recordkeeping is necessary for the proper operation of this program, including whether the information would have practical utility; (2) the accuracy of USDA's estimate of the burden of the recordkeeping requirements, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the records to be maintained; and (4) ways to minimize the burden of the recordkeeping on those who are to maintain and/or make the records available, including the use of appropriate automated, electronic, mechanical, or other technological recordkeeping techniques or other forms of information technology. Comments concerning the recordkeeping requirements contained in this proposed rule should reference the date and page number of this issue of the **Federal Register** and should be sent to Country of Origin Labeling Program, Room 2092–S; Agricultural Marketing Service (AMS), USDA; STOP 0249; 1400 Independence Avenue, SW.; Washington, DC 20250–0249, or by facsimile to 202/720–3499, or by e-mail to *cool@usda.gov*.

Comments sent to the above location should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503. All responses to this action will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

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List of Subjects in 7 CFR Part 60

Agricultural commodities, Fish, Food labeling, Meat and meat products, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR chapter I is proposed to be amended by adding part 60 to read as follows:

PART 60—COUNTRY OF ORIGIN LABELING

Subpart A—General Provisions

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60.121 Processed food item.
60.122 Produced.
60.123 Produced in any country other than the United States.
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60.130 United States country of origin.
60.131 U.S. flagged vessel.
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60.133 Waters of the United States.
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Country of Origin Notification

60.200 Country of origin notification.
60.300 Markings.

Recordkeeping

60.400 Recordkeeping requirements.

Subpart B—[Reserved]

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

Subpart A—General Provisions

Definitions

§ 60.101 Act.

Act means the Agricultural Marketing Act of 1946, (7 U.S.C. 1621 *et seq.*).

§ 60.102 AMS.

AMS means the Agricultural Marketing Service, United States Department of Agriculture.

§ 60.103 Beef.

Beef means meat produced from cattle, including veal.

§ 60.104 Canned.

Canned means packaged in a shelf-stable container including but not limited to cans, jars, flexible containers (*e.g.*, pouches), or semi-rigid containers.

§ 60.105 Consumer package.

Consumer package means any container or wrapping in which a covered commodity is enclosed for the delivery and/or display of such commodity to retail purchasers.

§ 60.106 Covered commodity.

(a) *Covered commodity* means:

(1) muscle cuts of beef (including veal), lamb, and pork;

(2) ground beef, ground lamb, and ground pork;

(3) farm-raised fish and shellfish (including fillets, steaks, nuggets, and any other flesh);

(4) wild fish and shellfish (including fillets, steaks, nuggets, and any other flesh);

(5) perishable agricultural commodities as defined by the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)); and

(6) peanuts;

(b) Covered commodities are excluded from this part if the commodity is an ingredient in a processed food item.

§ 60.107 USDA.

USDA means the United States Department of Agriculture.

§ 60.108 Farm-raised fish.

Farm-raised fish means fish or shellfish that have been harvested in controlled or selected environments, including ocean-ranched (*e.g.,* penned) fish and shellfish confined in managed beds; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

§ 60.109 Food service establishment.

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. Similar food service facilities include salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

§ 60.110 Ground beef.

Ground beef has the meaning given the term in 9 CFR 319.15(a), *i.e.*, chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, and containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders.

§ 60.111 Ground lamb.

Ground lamb means comminuted lamb of skeletal origin that is produced in conformance with all applicable Food Safety Inspection Service labeling guidelines.

§ 60.112 Ground pork.

Ground pork means comminuted pork of skeletal origin that is produced in conformance with all applicable Food Safety Inspection Service labeling guidelines.

§ 60.113 Hatched.

Hatched means emerged from the egg.

§ 60.114 Ingredient.

Ingredient means a component either in part or in full, of a finished retail food product.

§ 60.115 Lamb.

Lamb means meat, other than mutton (or yearling mutton), produced from sheep.

§ 60.116 Legibly.

Legibly means English language text that can be easily read by a consumer.

§ 60.117 Perishable agricultural commodity.

Perishable agricultural commodity means fresh and frozen fruits and vegetables of every kind and character that have not been manufactured into articles of food of a different kind or character and includes cherries in brine as defined by the Secretary in accordance with trade usages.

§ 60.118 Person.

Person means any individual, partnership, corporation, association, or other legal entity.

§ 60.119 Pork.

Pork means meat produced from hogs.

§ 60.120 Processed (for fish and shellfish).

Processed in the case of wild and farm-raised fish and shellfish means any process that effects substantial transformation as defined by the U.S. Bureau of Customs and Border Protection (CBP).

§ 60.121 Processed food item.

Processed food item means:

(a) a retail item derived from a covered commodity that has undergone a physical or chemical change, and has a character that is different from that of the covered commodity; or

(b) a retail item derived from a covered commodity that has been combined with: other covered commodities; or other substantive food components (*e.g.*, chocolate, stuffing), resulting in a distinct retail item that is no longer marketed as a covered commodity, provided that the addition of components that enhance or represent further steps in the preparation of the product for consumption, such as water, seasonings, sugars, or breading would not in itself exclude a covered commodity from labeling under this subpart.

§ 60.122 Produced.

Produced means in the case of fresh and frozen fruits and vegetables, and peanuts means grown.

§ 60.123 Produced in any country other than the United States.

Produced in any country other than the United States means in the case of:

(a) Beef, Pork, and Lamb: born, raised, and/or slaughtered outside the United States.

(b) Farm-raised Fish and Shellfish: hatched, raised, harvested, and/or processed outside the United States, and the waters of the United States.

(c) Wild Fish and Shellfish: harvested and/or processed outside the United States, and the waters of the United States, or by a vessel not registered in the United States.

(d) Fresh and frozen fruits and vegetables: grown outside the United States.

(e) Peanuts: grown outside the United States.

§ 60.124 Production step.

Production step means, in the case of:

(a) Beef, pork and lamb: born, raised, and slaughtered.

(b) Farm-raised fish and shellfish: hatched, raised, harvested, and processed.

(c) Wild fish and shellfish: harvested and processed.

§ 60.125 Raised.

Raised means in the case of:

(a) Beef, pork, and lamb: the period of time from birth until slaughter.

(b) Farm-raised fish and shellfish: grown by means of aquaculture management techniques from the period of time from hatched to harvested.

§ 60.126 Retailer.

Retailer means any person licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

§ 60.127 Secretary.

Secretary means the Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

§ 60.128 Slaughter.

Slaughter means the point in which a livestock animal is prepared into meat products for human consumption.

§ 60.129 United States.

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States, and the waters of the United States as defined in § 60.133.

§ 60.130 United States country of origin.

United States country of origin means in the case of:

(a) Beef: from animals born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

(b) Lamb and pork: from animals born, raised, and slaughtered in the United States.

(c) Farm-raised fish and shellfish: from fish or shellfish hatched, raised, harvested, and processed in the United States.

(d) Wild-fish and shellfish: from fish or shellfish harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

(e) Fresh and frozen fruits and vegetables: from products grown in the United States.

(f) Peanuts: from products grown in the United States.

§ 60.131 U.S. flagged vessel.

U.S. flagged vessel means:

(a) Any vessel documented under chapter 121 of title 46, United States Code, or

(b) Any vessel numbered in accordance with chapter 123 of title 46, United States Code.

§ 60.132 Vessel flag.

Vessel flag means the country of registry for a vessel, ship, or boat.

§ 60.133 Waters of the United States.

Waters of the United States means those fresh and ocean waters contained within the 200-mile boundary of the Exclusive Economic Zone (EEZ) surrounding the United States.

§ 60.134 Wild fish and shellfish.

Wild fish and shellfish means naturally-born or hatchery-originated fish or shellfish released in the wild, and caught, taken, or harvested from non-controlled or non-selected waters or beds; and fillets, steaks, nuggets, and any other flesh from a wild fish or shellfish.

Country of Origin Notification

§ 60.200 Country of origin notification.

In providing notice of the country of origin as covered by the Act, the following requirements shall be followed by retailers:

(a) *General.* Each covered commodity offered for sale individually, in a bulk bin, carton, crate, barrel, cluster, or consumer package shall bear a legible declaration of the country of origin as set forth in this regulation.

(b) *Exemptions.* Food service establishments as defined in § 60.109 are exempt from labeling under this subpart.

(c) *Exclusions.* A covered commodity is excluded from this subpart if it is an ingredient in a processed food item as defined in § 60.121.

(d) *Designation of Wild Fish and Farm-Raised Fish.* The notice of country of origin for fish and shellfish shall include and distinguish between wild and farm-raised fish and shellfish as those terms are defined in this regulation.

(e) *Labeling Covered Commodities of United States Origin.*

(1) A covered commodity may only bear the declaration of ''Product of the U.S.'' at retail if it meets the definition of United States Country of Origin as defined in § 60.130.

(2) Products further processed or handled in a foreign country after meeting the requirements to be labeled as U.S. origin as defined in § 60.130 (*e.g.*, born, raised, and slaughtered or grown) may bear the declaration of ''Product of the U.S.'' at retail provided the identity of the product is maintained along with records to substantiate the origin claims and the claim is consistent with other applicable Federal requirements.

(f) *Labeling Imported Products.* Imported covered commodities for which origin has already been established as defined by this law (*e.g.*, born, raised, slaughtered or grown), shall retain their origin, as determined by CBP at the time the product entered the United States, through retail sale.

(g) *Labeling Covered Commodities When the Product Has Entered the United States During the Production Process.*

(1) Beef, Lamb, Pork:

(i) If an animal was born and/or raised in country X prior to slaughter or further raising and slaughter in the United States, the resulting meat products derived from that animal shall be labeled at retail as being imported from country X and shall include the production step(s) occurring in the United States. Alternatively, such products may be labeled to specifically identify the production step(s) occurring in the country other than the United States if the animal's identity was maintained along with records to substantiate the origin claims.

(ii) If an animal was born in country X and raised in country Y prior to slaughter or further raising and slaughter in the United States, the resulting meat products derived from that animal shall be labeled at retail as being imported from country Y and shall include the production step(s) occurring in the United States. Alternatively, such products may be labeled to specifically identify the production step(s) occurring in the country(ies) other than the United States if the animal's identity was maintained along with records to substantiate the origin claims.

(2) Wild fish and shellfish:

(i) If a covered commodity was harvested in the waters of the United States as defined in § 60.133 or by a U.S. flagged vessel and processed in country X or onboard a country X flagged vessel, the product shall be labeled at retail as product of country X. Alternatively, the product may also be labeled to include the production step occurring in the United States if the product's identity was maintained along with records to substantiate the origin claims. The covered commodity shall also be labeled at retail to indicate that it was derived from wild fish and/or shellfish.

(ii) If a covered commodity was harvested in country X and processed in the United States or aboard a U.S. flagged vessel, the product shall be labeled at retail as being imported from country X and processed in the United States. The covered commodity shall also be labeled at retail to indicate that it was derived from wild fish and/or shellfish.

(3) Farm-raised fish and shellfish:

(i) If a covered commodity was hatched in country X and raised, harvested, and/or processed in the United States, the product shall be labeled at retail as being imported from country X and shall include the production step(s) occurring in the United States. The covered commodity shall also be labeled at retail to indicate that it was derived from farm-raised fish and/or shellfish.

(ii) If a covered commodity was hatched, raised, and harvested in the United States and processed in country X, the product shall be labeled at retail as product of country X. Alternatively, the product may also be labeled to include the production step occurring in the United States if the product's identity was maintained along with

records to substantiate the origin claims. The covered commodity shall also be labeled at retail to indicate that it was derived from farm-raised fish and/or shellfish.

(h) *Blended Products.* For commingled or blended retail food items comprised of the same covered commodity (*e.g.*, bagged lettuce, ground beef, shrimp) that are prepared from raw material sources having different origins, the label shall list alphabetically the countries of origin (as set forth in these regulations) for all raw materials contained therein.

(i) *Remotely Purchased Products.* For sales of a covered commodity in which the customer purchases a covered commodity prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, etc.), the retailer shall provide the country of origin notification at the time the product is delivered to the consumer.

§ 60.300 Markings.

(a) Country of origin declarations can either be in the form of a placard, sign, label, sticker, or other format that allows consumers to identify the country of origin and, if applicable, designation of wild or farm-raised, of particular covered commodities. The declaration of the country of origin of a product may be in the form of a statement such as ''Product of USA,'' ''Grown in Mexico,'' or may only contain the name of the country such as ''USA'' or ''Mexico'' provided it is in conformance with other existing Federal labeling laws.

(b) The declaration of the country of origin and, if applicable, the designation of wild or farm-raised, (*e.g.*, placard, sign, label, sticker, band, twist tie, or other display) must be placed in a conspicuous location, so as to render it likely to be read and understood by a customer under normal conditions of purchase, and written in English; additional accompanying languages are permissible.

(c) The declaration of country of origin information and, if applicable, the designation of wild or farm-raised, may be typed, printed, or handwritten provided it is in conformance with other existing Federal labeling laws and does not obscure other labeling information required by existing Federal regulations.

(d) A bulk container (*e.g.*, shipper, bin, carton, and barrel), used at the retail level to present product to consumers, may contain a covered commodity from more than one country of origin provided the covered commodity is individually labeled (*e.g.*, PLU sticker).

(e) Abbreviations and variant spellings that unmistakably indicate the country of origin, such as ''U.K.'' for ''The United Kingdom of Great Britain and Northern Ireland'' are acceptable. The adjectival form of the name of a country or region/city within a country may be used as proper notification of the country of origin of imported commodities provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. Symbols or flags alone may not be used to denote country of origin.

(f) State or regional label designations are not acceptable in lieu of country of origin labeling.

Recordkeeping

§ 60.400 Recordkeeping requirements.

(a) General.

(1) All records must be legible and written in English and may be maintained in either electronic or hard copy formats. Due to the variation in inventory and accounting documentary systems, various forms of documentation and records will be acceptable provided the chain of custody of the covered commodity can be determined and the origin claims, and, if applicable, designations of wild or farm-raised, substantiated.

(2) Upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records and other documentary evidence that will permit substantiation of an origin claim and, if applicable, designation of wild or farm-raised, in a timely manner during normal hours of business and at a location that is reasonable in consideration of the products and firm under review.

(b) Responsibilities of Suppliers.

(1) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must make available information to the buyer about the country of origin and, if applicable, designation of wild or farm-raised, of the covered commodity. In addition, the supplier of a covered commodity that is responsible for initiating a country of origin declaration, which in the case of beef, lamb, and pork is the meat packing facility, and, if applicable, designation of wild or farm-raised, must possess or have legal access to records that substantiate that claim.

(2) Any intermediary supplier (*i.e.*, not the supplier responsible for initiating a country of origin declaration, and if applicable, designation of wild or farm-raised) handling a covered commodity that is found to be mislabeled for country of origin shall not be held liable for a violation of the Act by reason of the conduct of another if the intermediary supplier could not have been reasonably expected to have had knowledge of the violation from the information provided by the previous supplier.

(3) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (*i.e.*, including but not limited to growers, distributors, handlers, packers, and processors), must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction, for a period of 2 years from the date of the transaction.

(4) For an imported covered commodity, the importer of record as determined by CBP, must ensure that records: provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient; and substantiate country of origin claims and, if applicable, designations of wild or farm-raised and must maintain such records for a period of 2 years from the date of the transaction.

(5) Each supplier that handles similar covered commodities from more than one country must be able to document that the origin of a product was separately tracked, while in their control, during any production and packaging processes to demonstrate that the identity of a product was maintained.

(c) Responsibilities of Retailers.

(1) Records and other documentary evidence (*e.g.*, shipping receipt from central warehouse) relied upon at the point of sale to establish a product's country of origin and, if applicable, designation of wild or farm-raised, must be maintained at the point of sale or otherwise be reasonably available to any duly authorized representative of USDA at the facility for at least 7 days following the retail sale of the product.

(2) Records that identify the retail supplier, the product unique to that transaction, and the country of origin information and, if applicable, designation of wild or farm-raised, must be maintained for a period of 2 years from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, warehouse, central offices or other off-site location.

(3) Any retailer handling a covered commodity that is found to be mislabeled for country of origin shall

not be held liable for a violation of the Act by reason of the conduct of another if the retailer could not have been reasonably expected to have had knowledge of the violation from the information provided by the supplier.

(4) In construing and enforcing the provisions of the Act and the regulations contained in this part, the act, omission, or failure of any agent, officer, or other person acting for or employed by a person subject to the provisions of the Act within the scope of his/her employment or office, shall in every case be deemed the act, omission, or failure of the person subject to these provisions.

Subpart B—[Reserved]

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A.J. Yates,

Administrator, Agricultural Marketing Service.

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