of the required reserve transfer and earnings for that month and for the prior twelve-month period. The notice must also provide an explanation of why the current month's required reserve transfer exceeded earnings for that month.

(c) *Asset and liability management.* (1) In conducting the interest rate sensitivity analysis set forth in § 704.8(e)(1)(i), a wholesale corporate credit union must limit its risk exposure to levels that do not result, at any time, in an MVPE ratio below .75 percent or a decline in MVPE of more than 35 percent.

(2) A wholesale corporate credit union must obtain, at its expense, an annual third-party review of its asset and liability management modeling system.

[FR Doc. 96–18453 Filed 7–22–96; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 127, and 135

[Docket No. 28577; Notice No. 96–4]

RIN 2120–AG11

Special Flight Rules in the Vicinity of the Rocky Mountain National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking; extension of comment period.

SUMMARY: This document announces an extension of the comment period on a Notice of Proposed Rulemaking (NPRM), which proposes to establish a Special Federal Aviation Regulation to preserve the natural quiet of Rocky Mountain National Park from any potential adverse impact from aircraft-based sightseeing overflights. This action is being taken to rectify the discrepancy of the comment period closing date between the NPRM published in the Federal Register and the closing date of the NPRM located in the FAA Rules Docket.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28577, 800 Independence Avenue SW., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov. Comments must be marked Docket No. 28577. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Notice No. 96–4 was placed on immediate display at the Federal Register on May 10, 1996, and published on May 15, 1996 (61 FR 24582). This Notice, as published, provided for a 90 day comment period to close on August 13, 1996. The FAA Rules Docket inadvertently stamped the wrong date on the copy of the notice located in the docket room at FAA Headquarters that comments to Notice No. 96–4 must be received on or before August 18, 1996, which falls on a Sunday. To afford all interested persons, especially those who relied on the closing date of the comment period provided for in the FAA Docket, the opportunity to comment on the proposal, the FAA extends the comment period, as published in the Federal Register, to coincide with the closing date of the comment period as provided for in the FAA Docket. Therefore, comments on this Notice should be received on or before August 19, 1996.

Extension of Comment Period

The comment period closing date on Notice No. 96–4, Special Flight Rules in the Vicinity of the Rocky Mountain National Park, is hereby extended to August 19, 1996.

Issued in Washington, DC on July 17, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic, Airspace Management.

[FR Doc. 96–18552 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AB61

Country of Origin Marking Requirements for Frozen Imported Produce

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking; solicitation of comments.

SUMMARY: In response to comments received concerning an Advance Notice of Proposed Rulemaking published by Customs on February 2, 1995, regarding the need for country of origin marking requirements for frozen imported produce, and in further consideration of Customs duty to prescribe marking rules for imported merchandise when necessary, Customs proposes to amend its regulations to require that the country of origin of imported produce be marked on the front panel of packages of frozen produce in order for the marking to comply with the statutory requirement that it be in a ''conspicuous place''. This amendment is proposed to ensure a uniform standard for the country of origin marking of frozen produce.

DATES: Comments must be received on or before September 23, 1996.

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

FOR FURTHER INFORMATION CONTACT: David Cohen, Special Classification and Marking Branch, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Failure to mark an article in accordance with the requirements of 19 U.S.C. 1304 may result in the levy of an additional duty of ten percent *ad valorem*. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. This document concerns the correct country of origin marking for packages of frozen imported produce pursuant to 19 U.S.C. 1304 and 19 CFR part 134.

Customs Ruling and Court Action

On May 9, 1988, Norcal/Crosetti Foods, Incorporated, and other California packers of domestically-grown produce requested a ruling from Customs concerning what constituted a

conspicuous place for country of origin marking on packages of frozen produce, *i.e.*, whether the marking should be located on the front or some other panel of the package and in what type size and style it should appear. The request asked Customs to determine whether packaged frozen imported produce was considered marked in a conspicuous place if the marking did not appear on the front panel of the package in prominent lettering. Sample packages which were not marked on their front panels were submitted with the ruling request. On November 21, 1988, Customs issued Headquarters Ruling Letter (HRL) 731830, and stated that all of the samples that the domestic packers submitted complied with the country of origin marking requirements. Customs found that the country of origin marking on packages of frozen imported produce was not required to appear on the front panel of the package, be in lettering at least as prominent as the product description, and/or appear in a color or typestyle vividly contrasting with the rest of the front panel to be considered conspicuous.

The packers obtained judicial review of the Customs determination in HRL 731830 by the Court of International Trade (CIT). *Norcal/Crosetti Foods, Inc.* v. *U.S. Customs Service,* 15 CIT 60, 758 F.Supp. 729 (CIT 1991) (*Norcal I*). In *Norcal I,* the Court disagreed with the ruling and held that frozen produce is not marked in a conspicuous place unless it is marked on the front panel of the package.

Upon examination of the sample packages supplied to Customs, the Court found that the only consistency in the country of origin marking of frozen imported produce was the inconsistency of where manufacturers chose to place the marking. The Court found that most often the marking was lost among information denoted in various small typefaces which appeared on the back or side panels of the package. The Court stated that producers were reluctant to conspicuously display the source of the food, and that the result of these inconsistencies was that customers could not be assured of easily finding the country of origin marking, even upon reasonable inspection of the package. The Court stated that this was a situation at cross-purposes with Congress' attempt to ensure that consumers know of the country of origin of imported goods before they decide to purchase the particular product.

The court took judicial notice of the common method of displaying the merchandise in shelved freezers or frozen food bins with the front panel in view and the rear panel obscured. The Court found that frozen vegetables were commonly marketed in long, low freezers with open tops, or wall-mounted freezers with glass doors, and that access to frozen produce is limited and sometimes awkward, given that the produce must not defrost. The Court further found that packages are usually displayed so that only the front panel is clearly visible. Further, because the packages are frozen and cold to the touch, and because, at least in upright freezers, the freezer door must be held open, the Court found that customers are unable to scan the labels on frozen produce as easily as those on dry goods or other produce that are not frozen. All of these factors, according to the Court, prevent consumers from having the opportunity to see the country of origin marking that is secluded among the small print on the back of a package.

The Court found the analogy in the ruling to the placement of nutritional information on packages unconvincing, because that information was not required information at that time. In contrast, it found a more persuasive analogy in the Food and Drug Administration (FDA) requirement that packages disclose the weight of their contents on the principal display panel. Such quantity of contents disclosure must be a certain size and located on the front or most prominent panel of the package.

The Court also observed that certain packages of frozen produce listed the name and U.S. address of the manufacturer and failed to indicate the country of origin in close proximity as required under the Customs Regulations. Applying 19 CFR 134.46, the Court held that if the words ''U.S.,'' or ''America,'' or a United States address appeared on those labels, the article would have to be marked to indicate the country of origin in lettering of at least a comparable size.

The Court concluded by finding that, although Customs had routinely interpreted ''conspicuous'' through 19 CFR 134.41(b), Customs failed in its issuance of HRL 731830 to follow the clear meaning of the statute or the regulation. Section 134.41(b) of the Customs Regulations provides, in part, that the country of origin marking should be easily found by the ultimate purchaser and read without strain. For packages of imported frozen produce, the Court found that the country of origin marking requirements were not met by the present practice of indicating the country of origin marking on the back or side panels.

The Court remanded the matter to Customs with directions to issue a new ruling. Pursuant to the court's order in *Norcal I,* Customs issued Treasury Decision (T.D.) 91–48 (56 FR 24115, May 28, 1991), which required the country of origin marking for frozen produce to be placed on the front panel of the package.

The government appealed the CIT's decision to the United States Court of Appeals for the Federal Circuit (CAFC) on the ground that the CIT lacked jurisdiction. *Norcal/Crosetti Foods, Inc.* v. *U.S.*, (Appeal No. 91–1295), 10 Fed.Cir. ____, 963 F.2d 356 (CAFC 1992) (*Norcal II*). In *Norcal II,* the CAFC reversed the judgment of the CIT and remanded the case with instructions to dismiss the complaint for lack of jurisdiction; the Court held that since the packers had not exhausted their administrative remedies, their claims were not properly before the CIT. The CAFC indicated that a proper course would have been for the packers to file a domestic interested party petition with Customs under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516).

The Section 516 Petition and Agency Action (1993)

A Section 516 petition was initiated by letters dated January 13 and January 29, 1993, and filed with Customs pursuant to part 175, Customs Regulations (19 CFR part 175). The petitioners were Norcal/Crosetti Foods, Incorporated and Patterson Frozen Foods, Incorporated, California packers of produce grown domestically. The International Brotherhood of Teamsters, on behalf of its Local 912, also submitted a petition by letter dated February 24, 1993, supporting the Norcal and Patterson petition (hereinafter, the petitions are collectively referred to as the *Norcal* petition). The *Norcal* petition asked Customs to reconsider its position in HRL 731830, and to adopt the findings of the CIT in *Norcal I.*

The petitioners contended that frozen imported produce is not marked in accordance with the requirement of 19 U.S.C. 1304 that the country of origin shall appear in a conspicuous place; under a correct application of 19 U.S.C. 1304, the country of origin must appear on the front panel of a package to be considered as marked in a conspicuous place. These domestic producers argued further that Customs standards for the size and prominence of such markings were not in conformity with 19 U.S.C. 1304. Supporting materials for the petition included samples of frozen produce packages. These samples were alleged to be illustrative of labels that, for various reasons, were not in compliance with the marking rules: *e.g.*,

missing markings, illegible markings, and markings that were not in a ''conspicuous place.'' The allegations closely mirrored the allegations in the complaint [filed] and the CIT's findings in *Norcal I.*

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

Approximately half of the public comments expressed support for the *Norcal* petition to require the country of origin marking of frozen imported produce to appear on the front panel of the packaging. These commenters presented data and arguments concerning the nature of frozen produce and the manner of its storage and presentation for sale, contending mainly that the inherent coldness of frozen produce makes the packaging more cumbersome to handle than other food products. These commenters accordingly concluded that the ultimate purchaser is likely to examine the produce in haste, and is not likely to see country of origin marking which appears on the back or side panel of the packaging.

Some respondents also expressed concern that frozen produce packaging tends to accumulate frost while being stored in refrigerators, such that the country of origin marking often becomes obscured in a way that is unique to frozen produce. In view of these factors, it was argued, country of origin marking which does not appear on the front of these frozen produce packages cannot be considered in a conspicuous place, and cannot meet the standard stated at 19 CFR 134.41(b) that marking must be easily found and read without strain.

Commenters opposed to the *Norcal* petition tended to dismiss these contentions as unfounded. These commenters claimed that there was no reason to establish a different marking location for frozen produce packages as opposed to other imported articles. They did not see the temperature of the package as a fundamental obstacle to handling a frozen produce package and turning it over to find country of origin marking. They assert that even the information appearing on the front panel probably cannot be read without picking up the package.

The petitioners, as well as several subsequent commenters, submitted for consideration samples of frozen produce packaging as evidence of common marking practices which were said to be short of the statutory standards for permanence, legibility, and conspicuousness. All the markings shown on the sample packages appear on the back panel. One major category of sample packages consisted of rectangular packages on which all the printed information, except the country of origin marking, is pre-printed. The country of origin instead is evidently stamped after the package is filled with frozen produce. The quality of this marking tends to be poor, and for the most part does not satisfy existing standards for permanence and legibility. The location is quite inconsistent between various packages in the same batch. Sometimes the lettering is stamped over pre-printed information; sometimes it is sideways or crooked; and sometimes it is smudged. These stamped-on markings are insufficient under the current statutory criteria of 19 U.S.C. 1304, particularly as regards legibility, indelibility and permanence.

Commenters opposed to the petition believe that these defects should be remedied by enforcement under the regulations of current standards governing legibility, permanence, indelibility and conspicuous placement, and that there is no compelling evidence that the current regulations are inadequate.

Other sample packages submitted by the petitioners and other commenters, while marked permanently and legibly under current standards (on the back panel), showed geographic markings or names which could create confusion or be misleading as to the country of origin of the frozen produce. Some such names or markings were part of the distributors' trademarks, while others used generic names for vegetable products in potentially confusing ways. The petitioners and other commenters argue that the remedy for these potentially confusing or misleading markings is country of origin marking which appears uniformly on the front panel of the package. They believe the ultimate purchaser is less likely to inspect frozen produce on its back panel to ascertain its country of origin when the front panel of the packaging indicates in print a reference to a locale in a country other than the country of origin.

Commenters opposed to the petition do not believe that ultimate purchasers are deceived by such references. One opponent indicated that while in some cases marking on the front panel of the package may be needed, it is not generally necessary if the current regulations were enforced in all cases. One of the sample packages already has been the subject of corrective action and a ruling by Customs. *See,* HRL 735085 (June 4, 1993) (Mixed frozen vegetables sold as ''American Mixtures'' required to have country of origin marking on front of package to be considered conspicuously marked; Customs indicated at that time, however, that marking on the back could be permissible in the absence of potentially confusing words or marks).

In T.D. 94–5 (58 FR 68743, December 29, 1993), Customs issued a final interpretive ruling based on the comments described above which were received in response to the September 9, 1993, Federal Register notice. T.D. 94–5 stated that back panel marking was insufficient and front panel marking of country of origin was required in a specified type size and style designed to match the net weight or quantity marking of the product under the Food Labeling Regulations (21 CFR 101.105). In T.D. 94–5, Customs modified T.D. 91–48 by requiring that conspicuous marking within the meaning of T.D. 91–48, shall be limited to marking which complies with the additional specifications for type size and style set forth in T.D. 94–5. The effective date initially established for the decision in T.D. 94–5 was May 8, 1994, in order to allow importers time to modify their packaging. On March 29, 1994, however, Customs issued two Federal Register documents: One (59 FR 14458) suspending the compliance date of May 8, 1994, for parties adversely affected by the country of origin marking requirements specified in T.D. 94–5, and the other (59 FR 14579) giving notice of its intention to adopt a new compliance date of January 1, 1995, and soliciting comments on both the proposed compliance date and on the specifications regarding type size and style.

In response to T.D. 94–5, however, an action was filed with the Court of International Trade on behalf of American Frozen Food Institute, Incorporated, and National Food Processors Association, which challenged the Customs decision. In *American Frozen Food Institute, Inc.; et al.* v. *The United States,* (Slip Op. 94–97), 18 CIT _____, 855 F.Supp. 388 (CIT 1994), the CIT ruled that because Customs had chosen to promulgate front panel marking in combination with other requirements needing APA (Administrative Procedure Act, 5 U.S.C. 553) rulemaking procedures, the entirety of T.D. 94–5 could not stand. The Court accepted the government's position that to the extent the front panel marking portion of T.D. 94–5 was

separable from the other portions of the ruling it constituted an interpretive ruling. However, the court found that the type size and style portion of the ruling functioned as a legislative ruling, as Customs had selected a narrow range of sizes and styles from a broad spectrum of type sizes and styles that could be considered conspicuous. Accordingly, the Court found that the selection of type size and style requirements imposed additional requirements which were not promulgated as a regulation in accordance with APA rulemaking procedures.

The court further concluded that because the full rulemaking process had not been followed, it would not rule on whether T.D. 94–5 was acceptable substantively. Since the court declared T.D. 94–5, in its entirety, null and void, there is no decision on the 1993 petitions of the domestic interested parties. On September 8, 1995, Customs received notice from Dean Foods Vegetable Company (Dean Foods) that it had purchased the assets of Norcal/ Crosetti Foods, Incorporated. Dean Foods stated that, as Norcal/ Crosetti's successor in interest, it no longer supported the petition and it withdrew the comments submitted by Norcal/ Crosetti Foods in response to Customs solicitation of comments. However, the petitions of Patterson Frozen Foods, Incorporated, and the International Brotherhood of Teamsters, on behalf of its Local 912, are still pending.

Proposed Rulemaking

In view of the foregoing background, Customs is exercising its authority under 19 U.S.C. 1304(a)(1) to prescribe by regulation reasonable methods of marking and a conspicuous place on the article (or container) where the marking must appear on packages of frozen produce. As the foregoing history of the issue illustrates, the question of marking of frozen imported produce has been embroiled in eight years of procedural disputes and litigation. In an attempt to disentangle the issue from this history, to provide complete regulatory due process, and to facilitate a fresh examination of the substantive issues involved, Customs chose to publish an advance notice of proposed rulemaking (ANPRM). 60 FR 6464 (1995). Customs published the ANPRM on February 2, 1995, and solicited comments with respect to the marking requirements for frozen imported produce. The comments received are summarized below.

In addition, Customs has considered and drawn upon evidence and opinions in the record of this matter, including public comments received since the first ruling request and the various court opinions. These have been considered for whatever persuasive authority they may have regardless of whether they were submitted in response to the ANPRM or, in the case of judicial opinions, are legally binding.

Summary of Comments Received in Response to the ANPRM.

A total of fifty comments were submitted in response to the February 2, 1995, ANPRM. The commenters included a number of trade organizations, companies in the business of manufacturing, processing, and distributing frozen produce, a non-profit organization, the Canadian government, members and officials of the International Brotherhood of Teamsters; the California Department of Justice, and a U.S. manufacturer of semiconductors, personal computers, and communications products. In addition to general comments, Customs invited specific comments regarding several issues, many of which have been incorporated into this document.

In response to the issues that Customs raised in the ANPRM as to whether there are current abuses in the country of origin marking of imported packages of frozen produce, the commenters in favor of front panel marking claim that many importers, processors, and distributors of frozen produce neglect to mark packages of frozen imported produce at all. In support of this position, they submitted several samples of what they believe to be non-complying labels. Some commenters also indicated that the marking was not conspicuous because the marking was in an inconspicuous place, the type size was too small, or the ink was smeared. Commenters opposed to a proposed rulemaking contend that they are unaware of any abuses with respect to the country of origin marking of frozen produce and believe that there is no need to provide specific marking requirements for frozen produce. They stated that any problems with the country of origin marking of frozen produce can be addressed through a case-by-case basis rather than additional rulemaking.

On the other hand, some of the commenters believe that the way frozen produce is displayed in the supermarket is sufficient reason to require special marking rules. The commenters in favor of front panel marking believe that because of the difference between the way canned produce and frozen produce are displayed in the supermarket, canned produce is easier for the consumer to pick up and inspect than frozen produce. Further, they contend that canned produce is displayed on a shelf at room temperature which makes it easy for the consumer to pick up and inspect the can. The cold conditions under which frozen produce must be maintained in the retail store make it less likely that consumers will examine the back or side panels of frozen produce packages prior to purchase. Moreover, these commenters submit that the consumer has a greater motivation to examine the back label of canned vegetables than of frozen produce. They maintain that the majority of frozen vegetables sold at retail are plain, blanched vegetables, without additives of any kind.

These commenters further state that the ingredients of frozen produce are generally named and pictured on the front panel of each package, there is almost never any added salt or sugar, and the consumer typically knows about the high nutritional content of vegetables and their ease of preparation. As a result, these commenters contend that the consumer typically has no particular need to examine the ingredients list, the nutritional content or the cooking instructions as part of the process involved in making a decision of whether or not to purchase the frozen produce item. Canned produce, they say, by contrast with frozen produce, usually contains ingredients beyond the pure agricultural product; therefore, the buyer of canned produce has more incentive to examine the contents, nutritional statement and cooking instructions than the buyer of frozen produce.

Commenters opposed to the requirement for front panel country of origin marking submit that there is no reason for frozen produce to be treated any differently than any other packaged food product. They argue that Customs has never imposed a general requirement that packaged goods bear country of origin marking on any specific panel or in any specific type size or type style. They submit that it would be arbitrary and capricious for Customs to impose on frozen produce a different and more burdensome labeling requirement than that which is applied to all other food products and to all other packaged products that are subject to the marking requirements.

These respondents dismiss the view that packages of frozen produce should be the subject of special regulatory attention because they are displayed in retail freezers and are ''cold to the touch.'' They maintain that there is no evidence to show that a frozen produce package is so cold as to prevent the purchaser from removing it from the

freezer display, examining it, and carrying it to the check-out counter. Moreover, they state that consumers are accustomed to picking up frozen food packages to read the nutritional information contained on the rear and side panel of the product. They point out that in enacting its current regulations, the FDA recognizes that the information panel which can be located on the back or side panel of a package is a conspicuous location for ingredient and nutrition information. Thus, these commenters believe that frozen produce should not be treated any differently for marking purposes than any other packaged food product.

In response to the issue of whether Customs should prescribe, by regulation, certain type size and style specifications for the country of origin marking of frozen produce, commenters who were in favor of this proposed measure believe that the type size and style should vary depending upon the size of the package. One commenter suggested that the marking should be the same size and style as the net weight declaration. Another commenter suggested that Customs follow the specifications set forth in the Federal Food Labeling Regulations (21 CFR 101.1) for information appearing on the principal display panel for the country of origin marking of packages of frozen produce.

The commenters opposed to the imposition of certain type size and style specifications maintained that additional regulations that would increase the prominence of country of origin markings would impose undue burdens on importers and would almost certainly be inconsistent with the government's interest in encouraging the consumption of vegetables and discouraging false health concerns.

Moreover, the commenters opposed to requiring certain type size and style specifications for country of origin marking claim that there is a vast difference in the amount of space that would be occupied on a package, depending upon whether one or ten countries are listed. They state that the question posed as to whether type size should vary with the size of the package emphasizes the impracticality of imposing industry-wide blanket regulations. These commenters believe that determinations of conspicuousness can and should be made on a case-by-case basis.

Customs Analysis of the Regulatory Options

With regard to a basic issue raised in the ANPRM, that is, whether rulemaking is needed, Customs determined that not to proceed with a marking proposal would leave the country of origin marking situation no better than it was prior to *Norcal I.* Manufacturers of frozen produce would still be free to choose marking options that could make it difficult for the average consumer to learn the origin of the produce prior to purchase, contrary to clear Congressional intent in the law. The weight of information and opinion submitted in response to the ANPRM did not furnish any justification for denial of the Section 516 petition and termination of the rulemaking process at this stage.

In developing this proposed regulation, Customs weighed a number of alternatives, one of which, front panel marking, was selected as the most consistent with the statutory requirement for marking frozen produce in a conspicuous place. Customs believes that a front panel requirement would prevent many of the regulatory abuses brought to the attention of Customs and the CIT and illustrated by the label samples submitted to Customs.

Customs has concluded that, while it can continue on a case-by-case basis to correct the types of marking problems identified in the record of this issue, and will do so as necessary, nonetheless a more comprehensive solution is needed to assure proper marking of frozen produce for the reasons discussed below. As a result, Customs is proposing a blanket requirement that country of origin marking appear on the front panel of the package of frozen imported produce. This should afford a definitive solution to a problem which has been demonstrated to be extensive.

Much of the frozen imported produce sold in the United States is packaged after importation. As such, the marking of the retail packages is not subject to physical supervision by Customs, but is performed under importers' certifications for the marking of repacked articles tendered in accordance with 19 CFR 134.25. The administrative burden of enforcing the marking of such repacked articles on a case-by-case basis is an additional reason for establishing uniform specifications for the marking of frozen produce. Such specifications should reduce ambiguity and interpretive questions, thus facilitating broad-based compliance by importers, packagers, and distributors.

Customs has concluded that the nature of frozen produce and its typical retail presentation makes marking on the back or side panel insufficient; that there are numerous examples of insufficient and potentially misleading marking practices based on current marking which is typically on the back panel; that marking appearing on the back panels of frozen produce packages is not easily found and is frequently obscured by competing text or graphics; and that consequently a uniform standard for marking should be prescribed for frozen produce packages in order to assure proper marking under 19 U.S.C. 1304.

In addition, in Customs judgment, a front panel marking requirement actually represents economy in government regulatory activity in contrast to the available alternatives. By its very nature, the front panel is a ''conspicuous place''. Consequently Customs, in the proposed regulation, has been able to minimize government-imposed requirements and leave the details of type size and label graphics to the manufacturer while reserving the right to proscribe abuses. Such regulatory simplicity is possible because there is little incentive or opportunity for the manufacturer to clutter up the front panel in a way that would obscure the marking and, in fact, there is a strong disincentive to do so.

In contrast, by its very nature, the back panel is not a ''conspicuous place''; it affords many opportunities to bury the origin marking in other information or graphic devices. In order to interpret back panel marking as marking in a ''conspicuous place'' within the meaning of the statute, Customs would have an obligation to inject itself into the micromanagement of label graphics in order to circumscribe the current abuses. (NOTE: The ''back panel'' routinely has been referred to in this discussion because it is the location typically chosen by the manufacturer for marking under current practice. While the side panel may contain, in some instances, less competing information and graphics than the back panel, Customs concludes that the side panel is even less likely than the back panel to receive careful scrutiny by the consumer except after purchase when it may be necessary to refer to it to find other information, such as cooking time.)

Regulating country of origin marking on the back, or information, panel thus could involve a fairly detailed set of rules on type sizes and styles, background colors, margins, headers, etc. It could even involve a complex exercise in regulating label graphics comparable to the ''Nutrition Facts'' box prescribed by the Food and Drug Administration. While a number of commenters have objected to front panel marking, we have concluded that this alternative is less burdensome to industry than the Government injecting

itself into the minutiae of label graphics on the back or information panel. Absent such Government controls on marking on the back panel, we believe that the current situation where the marking tends to disappear in other text would not be remedied.

In this regard, Customs did carefully consider whether one or more regulatory options that would regulate marking of country of origin on other than the front panel would constitute compliance with the statute as well as a workable alternative to front panel marking. In an effort to elicit suggestions for such an alternative, the following question was included in the ANPRM:

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

This question was intended in part to explore the potential for a compromise solution that would comply with the statute, correct existing marking problems, and be acceptable to the interested parties. Customs was interested in whether, for example, a ''conspicuous place'' on the back panel could be constructed by regulatory fiat in a manner analogous to the FDA-mandated ''Nutrition Facts'' box. Such a solution might eventuate from government design, industry-government agreement, or negotiated rulemaking in which Customs mediated between and among interested parties. However, no commenter came forward with such a solution. Also, while such an alternative would be a compromise position, it would have the disadvantage of involving Customs in developing a potentially elaborate set of guidelines for back panel marking, suitable for different styles and sizes of produce packages, thus injecting the government more deeply into labeling decisions.

Consideration was also given to providing the manufacturer with a choice: (1) Provide a simple and legible marking on the front panel or (2) submit to a more detailed set of guidelines for marking on the back panel as in the foregoing option. While this option would offer the regulated industry some flexibility, it was rejected in part because of its potential for confusing the ultimate purchaser who would not have a consistent place on the package to look for country of origin marking.

In sum, based on the results of the ANPRM and other information available, Customs concludes that the back panel (as well as the side panel), with its manifold distractions and without qualifications or graphic highlighting, is not a ''conspicuous place''. In contrast, the front panel, with its limited amount of clutter and its ready visibility, does constitute a conspicuous place. The front panel thus meets the statutory test of marking in a conspicuous place without elaborate conditions or regulations specifying, e.g., type size or other details of the marking. Country of origin marking on the front panel is presumptively adequate so long as it is permanent, indelible and legible and the ultimate purchaser can see it without strain.

In the interest of an open rulemaking process, Customs has the following comments on a number of key issues highlighted by commenters opposed to front panel marking:

Importance and Prominence of Origin Marking Relative to the Nutritional Information

Commenters opposed to a front panel marking requirement argued that country of origin information is not as ''important'' as the nutrition and health information. Yet the latter, under current government regulations, may be relegated to the back panel. In the opinion of such commenters, if the back panel is conspicuous enough for the concededly important nutritional information, it ought to be sufficiently conspicuous for the origin marking.

Such a comparison, in Customs' view, contributes little to the analysis of whether front panel marking of produce is necessary to comply with the law and to produce the desired consumer recognition. A number of items on the label, even discretionary information provided by the manufacturer such as preparation instructions and serving suggestions, may be considered ''important''.

However, the rationale behind the different mandatory label elements such as net weight, brand name, product identity, nutrition facts, and country of origin are different. They do not necessarily lend themselves to comparative valuation as to their relative ''importance'' and must be considered on their individual merits. The issue in each case is what placement enables the particular information to be effectively communicated to the consumer in a manner that carries out the intended statutory or regulatory purpose.

1. The ''Nutrition Facts'' Box, Without Regard to Location, Is Intrinsically More Visible Than Current Origin Marking

The ''Nutrition Facts'' box, mandated by the Food and Drug Administration after extensive rulemaking procedures, is now one of the most visible things on any panel of a package of food. Its distinctive graphics, required by regulation, are as instantly recognizable to the American consumer today as major corporate logos and trademarks. It contains its own eye-catching headline ''Nutrition Facts'' and is graphically subdivided by three distinctive bold lines. It must be large enough to accommodate a significant amount of required information. Hence, the high visibility or ''conspicuousness'' of the Nutrition Facts Box derives from its relative size and its unique design characteristics, not from the panel on which it is located. The term ''conspicuous'' in the marking statute, however, refers only to the location of the marking.

In contrast to the nutritional information, under current industry practice, the country of origin marking may consist of one or a few words such as ''Mexico'' or ''Product of Mexico'' placed without any attention-getting graphics in a place on the back panel where it is not particularly likely to be noticed. An example is for the country of origin to follow or to be merged with other geographical information, such as ''PRODUCT FROM THE UNITED STATES AND MEXICO. PACKAGED IN THE UNITED STATES''. Also, in the words of one of the petitioners in the Section 516 proceeding, the origin information is frequently submerged on the back panel in a ''sea of cooking instructions.'' The CIT observed in *Norcal I* that most often the marking is lost among the various small typeface information contained on the back or side panel of the package. In sum, Customs is not persuaded by the comparison of the relatively obscure placements accorded to country of origin marks in current practice to the very prominent government-mandated presentation of the nutritional data.

2. The ''Nutrition Facts'' Box May Not Lead the Consumer's Attention to the Origin Marking

While the availability of nutritional data may provide a consumer with a reason to consult the back or information panel of the package, this may not draw his attention to the origin marking. As indicated above, the ''Nutrition Facts'' box tends to dominate the panel on which it appears and the origin marking does not appear within the box or necessarily even in proximity to it. Furthermore, the origin marking may be relegated by design to an inconspicuous spot on the label.

There also is a fundamental difference between the type of information imparted by the ''Nutrition Facts'' box

and that imparted by the country of origin marking. The former identifies a number of characteristics that the product possesses which, in fact, it may share generically with the same type of product from another manufacturer and/or with a different origin. As one commenter suggested, consumers tend to purchase frozen vegetables as a ''commodity''. For common vegetables, the nutritional value of this commodity is often a known quantity to the experienced, health-conscious consumer. Furthermore, nutritional characteristics of frozen produce will not be likely to vary greatly from purchase to purchase, particularly if the consumer chooses brands consistently. This may diminish the attention paid by the consumer to the nutritional information once he is familiar with the produce and brand.

In this regard, it is believed that consumers reserve their closest scrutiny of the nutritional information for ''suspect foods'', *e.g.*, processed foods, foods known or suspected of containing high levels of fat, sodium, sugar, or additives. In contrast, frozen fruits and vegetables tend to be the ''good guys'' of the supermarket which require little scrutiny. In fact, in response to a petition filed by the American Frozen Food Institute, the Food and Drug Administration recently has published a notice of proposed rulemaking that would permit the use of the term ''healthy'' to describe frozen vegetables based on arguments submitted by the industry that the nutrient profile for frozen vegetables is essentially the same as that for fresh vegetables. 61 FR 534 (February 12, 1996). The foregoing considerations may result in the fine print on the information panel of frozen produce packages, including both nutritional information and origin marking, receiving less attention while the consumer is in the store than in the case of other products, including canned produce.

3. Origin Marking Relates to the Identity of the Product and Is Exclusively ''Point of Sale'' Information

Country of origin marking, in contrast to nutritional information, furnishes information that is specific to the product in the individual package that the consumer is examining. In fact, the origin information can be considered part of the ''identity'' of the product. Other information that describes, defines, or illustrates the identity of the product, such as the brand name or the vignette; the product name, *e.g.*, cauliflower; and the net weight are on the front panel where they can be instantly grasped by the consumer in making a purchasing decision. All of this information is ''point of sale'' information. It has little or no value (except perhaps in promoting brand loyalty) once the consumer leaves the store. In contrast, nutritional information has continuing educational value and may be consulted by the consumer at home, particularly during food preparation (e.g., serving size).

Since country of origin marking is point of sale information, if the consumer does not notice the information until he or she arrives at home, it then is too late to assist in the purchasing decision. The consumer cannot even adjust purchasing intentions based on experience for when he or she returns to the store for the next purchase. By then, the facts of country of origin may have shifted again even if the consumer chooses the same product with the same brand name.

The foregoing factors, in conjunction with the factors cited by the CIT in *Norcal I*, relating to the environment in the frozen food aisle, may cause the country of origin marking of frozen imported produce not to be noticed prior to purchase. This is precisely the type of outcome that the section 1304 requirement that the marking be in a ''conspicuous place'' is designed to prevent.

Health and Safety Implications of Front Panel Marking

A number of the commenters who opposed further rulemaking expressed concerns that requiring more conspicuous labeling of produce would arouse false concerns about health and safety on the part of consumers. In their view, this could lead to decreased purchases and consumption of frozen produce with resulting negative impacts on the U.S. economy and even on the health of consumers.

No information has been submitted to us and none suggests itself to us that would validate this concern. Customs believes that it is unlikely that a consumer will perceive an implied health warning in label information that is in no way identified as a warning. Consumers are presumably familiar with the health warning labels on tobacco products and alcoholic beverages, which are clearly stated as such, as well as poison warnings. Further, it is unlikely that the consumer will conclude that information such as country of origin that does not appear in the ''Nutrition Facts'' box is intended to convey a health and safety advisory. We believe it would take a highly explicit warning to overcome the consumer's belief in the presumptive healthfulness of frozen vegetables and fruits.

Moreover, we believe that the economic motivation that lies behind the marking statute is readily apparent to the informed consumer. Major trade developments and bilateral trade disputes and sanctions have received extensive publicity in the media and in public campaigns by trade associations, labor unions and others urging consumers to ''Buy American''. Thus, we see little likelihood that the consumer will misunderstand the significance of the country of origin marking. While the consumer, once informed of the country of origin, may choose a domestic source product over a foreign source product or vice versa, we do not see evidence that overall consumption of frozen produce is likely to be affected by labeling rules.

Impact of Front Panel Marking on Cost and Price

Finally, a number of commenters argued that more detailed labeling requirements would be costly to the manufacturers and that these costs would be passed on to the consumer. This would particularly be true, they state, if the product were sourced from many countries and if the sources were constantly shifting. Some of these broadly stated arguments seem aimed at the marking requirement itself, a statutory mandate that Customs has no choice but to enforce. Implicit in the marking statute is the effort and expense of adding information to a label that might not otherwise be incurred. There is no exemption in the statute, or in the Customs Regulations, for products sourced in a number of countries.

On the other hand, it may be noted that frozen produce labels already frequently are characterized by colorful, sophisticated, and detailed graphics. These labels may include an array of totally discretionary and promotional information offered by the manufacturer such as recipes and advertisements for other products. Realistically evaluating the proposed rule in this context, we have not received convincing evidence that placing simple country of origin information in a different or additional place on the label, if required after a reasonable period of time for industry to adjust, will adversely impact profit margins, be economically injurious to the consumer, or have an inflationary impact.

Further, as a practical matter, we have not received to date empirical evidence that sourcing from more than two or three countries is widespread as an industry practice. In fact, we are not aware that it is likely that more than a single source is typically involved in the

case of a package containing a single product (e.g., broccoli or cauliflower).

Other Issues

1. Type Size and Style Requirements

T.D. 94–5 contained fairly detailed type size requirements applicable to its front panel marking requirement. Three different type sizes were specified for different size packages of produce. However, this proposed rule does not specify type sizes and styles, background colors or other graphic stipulations applicable to front panel marking. Customs believes that this is consistent with regulatory economy and minimum regulatory burden to the industry. Moreover, Customs has concluded that the front panel marking requirement, subject to the other statutory criteria of legibility, indelibility, and permanence is sufficient to provide an adequate opportunity for the reasonably attentive consumer to notice the country of origin information at point of sale. Customs reserves its right to take enforcement action in the event that label graphics on a package obscure or destroy the requisite legibility of the marking.

2. Overstamped Markings and Other Illegible Markings

The plaintiffs in *Norcal I* and various commenters have alleged that packages of frozen produce contained stamped markings that are smeared or otherwise illegible. In a number of cases, packages are apparently ink stamped with the name of the country of origin after the packages have been filled with product. Frequently the result is a stamp that is smeared or all but wiped off due to condensation on the package. In other cases, the stamping is upside down *vis-a-vis* the print on the panel where the stamp appears, is turned sideways, or is placed over other text or graphics. All of these practices violate statutory standards.

No change in the marking requirements is proposed to address these problems. Customs believes that current regulations and enforcement powers are adequate. The importer is responsible for compliance with the marking statute. If ink markings, stick-on labels and other practices that importers use to avoid the cost or rigidity of preprinted labels do not hold up until the product reaches the ultimate consumer at the point of sale, then Customs reserves the right to take appropriate action, as prescribed by statute and regulations, including detention of the merchandise and imposition of marking duties.

3. Implementation Period

Suggestions received in response to the ANPRM regarding the length of the period from the publication date of a final rule to the required implementation date ranged from 6 to 12 months from commenters favoring tightened marking rules to 17 months or more from commenters opposed to a new rulemaking on marking of country of origin. Common sense as well as evidence in the record of this matter indicates to Customs that the incremental cost of relabeling to comply with new marking rules tends to have dropped dramatically by 18 months after the promulgation of new rules. Thus, Customs is proposing an 18-month implementation period to allow for current stock of labels to be depleted prior to the effective date of any final rule.

4. Consumer Surveys

Information submitted by commenters in response to the question in the ANPRM regarding determination of consumer behavior through surveys was divided and not conclusive. In general, there was opposition, particularly by commenters opposed to rulemaking, to the government conducting surveys at taxpayers' expense. In fact, Customs has conducted no survey and does not contemplate conducting a survey.

Commenters basing opinions on existing surveys reached different conclusions. Those favoring rulemaking argued that consumers were interested in country of origin information and tended to modify their behavior if such information were available. Some of the data relied on by these commenters concerned products other than produce, *e.g.,* apparel. Opponents of rulemaking argued, among other things, that consumers had little interest in country of origin information. While some consumers may value country of origin information as enabling them to act on preferences they may have regarding imported versus domestic-source products, other consumers may be relatively indifferent to the information. In either event, the marking statute is not designed solely for the individual benefit of the consumer, but serves a broader purpose.

Opportunity for Public Comment

As the foregoing illustrates, several issues with respect to the rulemaking procedure to promulgate country of origin marking regulations for frozen imported produce remain and public comments are once again being solicited prior to the issuance of a final rule. Suggestions received in response to the ANPRM on the length of the comment period for an NPRM ranged from 60 days to 120 days. Customs is herein providing its customary 60-day period. Since no commenter requested time in which to conduct a consumer survey, Customs believes the 60-day period is adequate, particularly in view of the extensive opportunity to comment already afforded, and it is not expected that this period will be extended. In addition to comments received on this proposal, all relevant material previously submitted will be taken into account in deciding on a final rule.

Pending a decision on whether a final rule will be promulgated, Customs continues to deliberate on what requirements are proper in the case of multiple source countries and whether Customs should set forth a de minimis level of foreign content that would trigger the country of origin marking requirements. These issues are not within the scope of this proposed rulemaking. Customs will consider the possible need for rulemaking on these issues in the future.

Since this administrative rulemaking process affects the decision to be made on the pending section 516 petition, the Customs Service has decided to delay issuance of a final decision on the section 516 petition until a final determination regarding the proposed regulations concerning the country of origin marking of packages of frozen produce contained in this document is made.

Discussion of Proposed Amendment

Customs proposes to amend part 134 of the Customs Regulations (19 CFR part 134) by adding a new paragraph (f) to § 134.43 to implement the country of origin marking requirements for packages of frozen imported produce. Section 134.43 sets forth the methods of marking for specific articles, such as watches, clocks, timing apparatus, Native-American-style jewelry, and Native American-style arts and crafts. Proposed paragraph (f) will contain two subparagraphs: Paragraph (1) will define frozen produce which is subject to the marking requirement, and paragraph (2) will denote the method of marking that is deemed acceptable.

Proposed Effective Date

Customs recognizes that manufacturers, distributors, and packers of frozen imported produce will need to consider revisions in their current packaging which may be needed to comply with these proposed regulations. Thus, in order to minimize the impact of these new requirements, it is also proposed that the regulations, if

adopted, not be effective until eighteen months from the date of the Federal Register Notice of Final Rulemaking.

Comments

While Customs received a request for a public hearing on the issues involved in this rulemaking from one commenter, the great majority of the commenters did not favor a hearing. Under these circumstances, Customs does not believe that a hearing would significantly enhance the process of public participation in the rulemaking and does not plan to hold a hearing. However, before adopting this proposed regulation as a final rule, consideration will be given to any written comments that are timely submitted in connection with this notice. Comments are requested on both the substance of these proposals and the proposed effective date, if the proposals are adopted. Members of the public submitting comments based on current labeling practices are requested, where possible, to submit sample labels illustrating the alleged practices. The submission of duplicate sets of labels will expedite evaluation of the comments and will be appreciated by the Customs Service.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1099 14th Street, NW., Suite 4000, Washington, DC.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

For the reasons set forth in the preamble, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this proposed amendment does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects in 19 CFR Part 134

Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Packaging and containers.

Proposed Amendments

It is proposed to amend part 134, Customs Regulations (19 CFR part 134), as set forth below:

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. In § 134.43, it is proposed to add a new paragraph (f) to read as follows:

§ 134.43 Methods of marking specific articles.

* * * * *

(f) *Frozen Produce*—(1) *Definition.* Frozen produce means frozen vegetables or mixtures of frozen vegetables provided for in Chapter 7, Harmonized Tariff Schedule of the United States (HTSUS), or frozen fruits or mixtures of frozen fruits provided for in Chapter 8, HTSUS.

(2) *Method of Marking.* (i) Unless otherwise excepted pursuant to 19 U.S.C. 1304(a)(3) and subpart D of this part, frozen produce must be marked with the country of origin of the produce on the front panel of its package for retail sale. The front panel is the part of a package that is most likely to be displayed, presented, shown, or examined by the ultimate purchaser under customary conditions of display for retail sale.

(ii) The country of origin marking on the frozen produce required by paragraph (f)(2)(i) of this section must appear in permanent, indelible and legible print or type so that the consumer can easily read it without strain. Condensed or compressed typefaces or arrangements shall not be used.

Approved: July 9, 1996.

Michael H. Lane,

Acting Commissioner of Customs.

James E. Johnson,

Assistant Secretary of the Treasury (enforcement).

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Office of the Assistant Secretary for Financial Markets

Fiscal Service

31 CFR Part 356

Amendments to the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds; Notice of Meeting

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Advance Notice of Proposed Rulemaking; Meeting.

SUMMARY: On May 20, 1996, the Department of the Treasury published an Advance Notice of Proposed Rulemaking soliciting comments on certain aspects of a new inflation-protection security. The Treasury is hosting a symposium to discuss the advantages and disadvantages of certain structures under consideration for the inflation-protection security Treasury intends to issue. The meeting will be open to the public.

DATES: 3:00 p.m., July 24, 1996.

ADDRESSES: Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220; Meeting Room To Be Announced. For security reasons, in order to be admitted to the Treasury Building, you must call the contact person below.

FOR FURTHER INFORMATION CONTACT: Questions about this notice should be addressed to Alison Shelton, Financial Economist, Office of Federal Finance Policy Analysis, Office of the Assistant Secretary for Financial Markets, at 202–622–2680. Persons wishing to attend the meeting are requested to contact Tinese Hamilton at 202–622–2624, prior to 12:00 noon Eastern time on July 24, 1996, to make arrangements for attendance.

SUPPLEMENTARY INFORMATION: On May 16, 1996, the Department of the Treasury (Department or Treasury) announced its intention to issue a new type of marketable book-entry security with a nominal return linked to the inflation rate in prices or wages, as officially published by the United States Government. An Advance Notice of Proposed Rulemaking (ANPR) seeking comments on various structures was published on May 20, 1996 (61 FR 25164) and a series of meetings was subsequently held by the Treasury to obtain public input on the new inflation-protection security.

As a result of the comments received in response to the ANPR and at the public meetings, the Department is