

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