

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.

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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.