

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