

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,