

products are segregated in receiving, storage, processing, and shipping operations. For packers and processors handling products from multiple origins, there may also be a need to operate separate shifts for processing products from different origins, or to split processing within shifts. In either case, costs are likely to increase. Records will need to be maintained to ensure that accurate country of origin information is retained throughout the process and to permit compliance and enforcement reviews.

Even if only domestic origin products or products from a single country of origin are handled, there may be additional procurement costs to source supplies from a single country of origin. Additional procurement costs may include higher transportation costs due to longer shipping distances and higher acquisition costs due to supply and demand conditions for products from a particular country of origin, whether domestic or foreign.

These additional costs may result in a number of consolidations within the processor, manufacturer, and wholesaler sectors for these covered commodities. Also, to comply with the proposed rule, retailers may seek to limit the number of entities from which they purchase covered commodities.

Additional alternatives considered: As previously mentioned, the COOL provisions of the 2002 Farm Bill leaves very little regulatory discretion in defining who is directly covered by this rule. The law explicitly identifies those retailers required to provide their customers with country of origin information for covered commodities (namely, retailers as defined by PACA).

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 discretion regarding this requirement for suppliers of covered commodities to provide information to retailers.

The proposed rule has no mandatory requirement, however, for any firm other than statutorily defined retailers to make country of origin claims. In other words, no producer, processor, wholesaler, or other supplier is required to make and substantiate a country of origin claim provided that the commodity is not ultimately sold in the form of a covered commodity at the establishment of a retailer subject to the proposed rule. Thus, for example, a processor and its suppliers may elect not to maintain country of origin information nor to make country of origin claims, but instead sell products

through marketing channels not subject to the proposed rule. Such marketing alternatives include foodservice, export, and retailers not subject to the proposed rule. USDA estimates that 41.4 percent of U.S. food sales occur through retailers subject to the proposed rule, with the remaining 58.6 percent sold by retailers not subject to the proposed rule or sold as food away from home. Additionally, food product sales into export markets provide marketing opportunities for producers and intermediaries that are not subject to the provisions of the proposed rule.

The law provides no discretionary authority for granting differing implementation timetables that could be used to ease the burdens on small entities. The law states that retailers subject to the statute are to label covered commodities with country of origin information beginning September 30, 2004. For retailers to meet this requirement, their suppliers will need to provide the necessary information to the retailers on or before this date. Retailers and their suppliers also will need to have the information and records necessary to substantiate all country of origin claims ultimately made at subject retailers. In short, the supply chains for the covered commodities will need to have the necessary systems and records in place to enable valid, verifiable country of origin labeling by retailers of covered commodities beginning September 30, 2004.

The proposed rule does not dictate systems that firms will need to put in place to implement the proposed requirements. Thus, different segments of the affected industries 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.

The proposed rule has no requirements for firms to report to USDA. Compliance audits will be conducted by USDA at firms' places of business. As stated previously, required records may be kept by firms in the manner most suitable to their operations and may be hardcopy documents, electronic records, or a combination of both. In addition, the proposed rule provides flexibility regarding where records may be kept. Such flexibility should reduce costs for small entities to comply with the proposed rule.

In effect, the proposed rule is a performance standard rather than a design standard. The proposed rule requires that covered commodities at

subject retailers be labeled with country of origin information, that suppliers of covered commodities provide such information to retailers, and that retailers and their suppliers maintain records and information sufficient to verify all country of origin claims. The proposed rule provides flexibility regarding the manner in which country of origin information may be provided by retailers to consumers. The proposed rule provides flexibility in the manner in which required country of origin information is provided by suppliers to retailers, and in the manner in which records and information are maintained to substantiate country of origin claims. Thus, the proposed rule provides the maximum flexibility practicable to enable small entities to minimize the costs of the proposed rule on their operations.

Paperwork Reduction Act

This proposed rule announces that AMS is requesting OMB approval for a new information collection and contains information collection provisions that are subject to review by OMB under PRA (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual recordkeeping burden.

Title: Recordkeeping and Records Access Requirements for Producers and Food Facilities.

OMB Number: 0581-new.

Type of Request: New collection.

Expiration Date: Three years from the date of approval.

Abstract: The country of origin labeling provision in the 2002 Farm Bill requires that specified retailers inform consumers as to the country of origin of covered commodities. This proposed rule requires that records and other documentary evidence used to substantiate an origin claim must, upon request, be made available to USDA representatives in a timely manner during normal business hours and at a location that is reasonable in consideration of the products and firm under review. Any person engaged in the business of supplying a covered commodity to a retailer (*i.e.*, including but not limited to growers, distributors, handlers, packers, and processors), whether directly or indirectly, must make country of origin information available to the retailer and must 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. For an imported covered commodity, the