Rules and Regulations

Federal Register
Vol. 78, No. 101
Friday, May 24, 2013

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 60 and 65

[Document No. AMS–LS–13–0004]

RIN 0581–AD29

Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts

AGENCY: Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule amends the Country of Origin Labeling (COOL) regulations to change the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and amends the definition for ''retailer'' to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA). The COOL regulations are issued pursuant to the Agricultural Marketing Act of 1946. The Agency is issuing this rule to make changes to the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and other modifications to enhance the overall operation of the program.

DATES: This final rule is effective May 23, 2013. The requirements of this rule do not apply to covered muscle cut commodities produced or packaged before May 23, 2013.

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SUPPLEMENTARY INFORMATION:

Background

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) (Pub. L. 107–171), the 2002 Supplemental Appropriations Act (2002 Appropriations) (Pub. L. 107–206), and the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–234) amended the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1621 *et seq.*) to require retailers to notify their customers of the country of origin of covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. AMS published a final rule for all covered commodities on January 15, 2009 (74 FR 2658), which took effect on March 16, 2009. On March 12, 2013, AMS published a proposed rule to amend the country of origin labeling provisions for muscle cut covered commodities (78 FR 15645).

Executive Summary

Purpose of the Regulatory Action

In June 2012, in a WTO case brought by Mexico and Canada, the WTO Appellate Body (AB) affirmed a previous WTO Panel's finding that the COOL requirements for muscle cut meat commodities were inconsistent with U.S. obligations under the WTO Agreement on Technical Barriers to Trade (TBT Agreement). In particular, the AB affirmed the Panel's determination that the COOL requirements were inconsistent with the TBT Agreement's national treatment obligation to accord imported products treatment no less favorable than that accorded to domestic products. The WTO Dispute Settlement Body (DSB) adopted its recommendations and rulings on July 23, 2012. The United States has until May 23, 2013, to comply with the WTO ruling.

As a result of this action, the Agency reviewed the overall regulatory program and is issuing this rule, under the authority of the Agricultural Marketing Act (7 U.S.C. 1621 *et seq.*), to make changes to the labeling provisions for muscle cut covered commodities and certain other modifications to the program. The Agency expects that these changes will improve the overall operation of the program and also bring the current mandatory COOL requirements into compliance with U.S. international trade obligations.

Summary of the Major Provisions of the Regulatory Action in Question

Under this final rule, origin designations for muscle cut covered commodities derived from animals slaughtered in the United States are required to specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation. In addition, this rule eliminates the allowance for commingling of muscle cut covered commodities of different origins. These changes will provide consumers with more specific information about the origin of muscle cut covered commodities.

Costs and Benefits

The costs of implementing these requirements will be incurred by intermediaries (primarily packers and processors of muscle cut covered commodities) and retailers subject to requirements of mandatory COOL. The Agency considers that the total cost of the rule is driven by the cost to firms of changing the labels and the cost some firms will incur to adjust to the loss of the flexibility afforded by commingling.

The estimated number of firms that will need to augment labels for muscle cut covered commodities is 2,808 livestock processing and slaughtering firms, 38 chicken processing firms, and 4,335 retailers. This totals 7,181 firms that will need to augment the mandatory COOL information presented on labels for muscle cut covered commodities.

Based on 2009 data, the Food Safety and Inspection Service (FSIS) estimated there were approximately 121,350 raw meat and poultry unique labels submitted by official establishments (i.e., establishments regulated by FSIS) and approved by the Agency (76 FR 44862). Assuming the upper bound estimate of 121,350 unique labels, the Agency estimates the midpoint cost of the final rule for this label change is $32.8 million with a range of $17.0 million to $47.3 million.

With regard to the elimination of commingling flexibility, which affects the beef and pork segments, the information submitted by commenters

confirms the Agency's understanding that the commingling flexibility is used by some packers, but that it is not possible to specify the extent to which packers are making use of the flexibility. Accordingly, the Agency made various assumptions and used several sources of data to estimate the range of commingling activity that might be occurring in the industry and the related range of costs that might be incurred from the elimination of commingling.

The Agency estimates a potential range of commingling of U.S. and foreign-origin livestock by U.S. packers of five percent to 20 percent. The Agency considers that the data analyzed support the possibility that the extent to which packers are commingling is closer to the lower end than the higher end of the range. Midrange estimates of commingling are 12.5 percent for fed cattle and hogs.

Estimated costs for the loss of commingling flexibility at the packer/processor level are $7.16 per head for cattle and $1.79 per head for hogs that are currently commingled. Estimated costs at the retail level are $0.050 per pound for beef and $0.045 per pound for pork muscle cuts derived from commingled livestock. For the beef segment, total costs for the loss of commingling flexibility to intermediaries and retailers are estimated to be $21.1 million, $52.8 million, and $84.5 million at the lower, midpoint, and upper levels. Similarly for the pork segment, total costs for the loss of commingling flexibility to intermediaries and retailers are estimated to be $15.0 million, $37.7 million, and $60.3 million at the lower, midpoint, and upper levels.

Combining costs for label changes with costs from the elimination of commingling flexibility yields estimated total adjustment costs of $123.3 million at the midpoint and ranging from $53.1 million at the low end to $192.1 million at the high end. Given that the Agency believes that the current extent of commingling likely falls closer to the lower end than the higher end of the estimates, the estimated implementation costs narrow to a range of $53.1 to $137.8 million.

The Agency believes that the incremental economic benefits from the labeling of production steps will be comparatively small relative to those that were discussed in the 2009 final rule.

A complete discussion of the costs and benefits can be found under the Executive Order 12866 section.

Summary of Changes to the COOL Regulations

Definitions

In the regulatory text for fish and shellfish (7 CFR part 60) and for all other covered commodities (7 CFR part 65), the definition for ''retailer'' is amended to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA) of 1930 (7 U.S.C. 499a(b)). This change more closely aligns with the language contained in the PACA regulation and clarifies that all retailers that meet the PACA definition of a retailer, whether or not they actually have a PACA license, are also covered by COOL.

Country of Origin Notification

Labeling Provisions for Muscle Cut Covered Commodities

Under this final rule, all origin designations for muscle cut covered commodities slaughtered in the United States must specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation. The requirement to include this information applies equally to all muscle cut covered commodities derived from animals slaughtered in the United States. This requirement will provide consumers with more specific information on which to base their purchasing decisions without imposing additional recordkeeping requirements on industry. The Agency considers these changes, which are discussed in detail below, consistent with the provisions of the statute.

Labeling Covered Commodities of United States Origin

Under this final rule, the United States country of origin designation for muscle cut covered commodities is required to include location information for each of the three production steps (i.e., ''Born, Raised, and Slaughtered in the United States''). The current COOL regulations permit the term ''harvested'' to be used in lieu of ''slaughtered.'' This final rule retains that flexibility.

In the case of chicken muscle cut covered commodities, the current COOL regulations define the term ''born'' as hatched from the egg. Therefore, under this final rule, the origin designations for chicken muscle cut covered commodities may use the term ''hatched'' in lieu of ''born.''

Labeling Muscle Cut Covered Commodities of Multiple Countries of Origin (From Animals Slaughtered in the United States)

Muscle cut covered commodities derived from multiple countries (from animals slaughtered in the United States) are those muscle cut covered commodities derived from animals that were born in another country (and thereby raised for a period of time in that country) and then, following importation, were further raised and slaughtered in the United States. Under this final rule, the origin designation for these muscle cut covered commodities must include location information for each of the three production steps (i.e., born, raised, and slaughtered). As stated above, there is some flexibility in the terminology that must be used with respect to referencing the production steps.

As discussed in the preamble of the January 15, 2009, final rule and in the March 12, 2013, proposed rule, if animals are born and raised in another country and subsequently further raised in the United States, only the raising that occurs in the United States needs to be declared on the label, as it is understood that an animal born in another country will have been raised at least a portion of its life in that other country. Because the country of birth is already required to be listed in the origin designation, and to reduce the number of required characters on the label, the Agency is not requiring the country of birth to be listed again as a country in which the animal was also raised. Accordingly, under this final rule, the production step related to any raising occurring outside the United States may be omitted from the origin designation of these commodities (e.g., ''Born in Country X, Raised and Slaughtered in the United States'' in lieu of ''Born and Raised in Country X, Raised and Slaughtered in the United States'').

However, in the relatively rare situation where an animal was born and raised in the United States, raised in another country (or countries), and then raised and slaughtered in the United States, the label must indicate all countries which the production step related to raising occurred. In this rare case, the label could read ''Born and Raised in the United States, Raised in Country X, Slaughtered in the United States.''

Finally, the origin designation for muscle cut covered commodities derived from animals imported for immediate slaughter as defined in § 65.180 is required to include

information as to the location of the three production steps. However, the country of raising for animals imported for immediate slaughter as defined in § 65.180 shall be designated as the country from which they were imported (e.g., ''Born and Raised in Country X, Slaughtered in the United States'').

Commingling

This final rule eliminates the allowance for commingling of muscle cut covered commodities of different origins. As discussed in the March 12, 2013, proposed rule, all origin designations are required to include specific information as to the place of birth, raising, and slaughter of the animal from which the meat is derived. Removing the commingling allowance lets consumers benefit from more specific labels.

Labeling Imported Muscle Cut Covered Commodities

As stated in the March 12, 2013, proposed rule, under the current COOL regulations, imported muscle cut covered commodities retain their origin as declared to the U.S. Customs and Border Protection at the time the products entered the United States (i.e., Product of Country X) through retail sale.

Under this final rule, these labeling requirements for imported muscle cut covered commodities remain unchanged. As is permitted under the current COOL regulations, the Agency will continue to allow the origin designation to include more specific information related to the three production steps, provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

Labeling

The current COOL regulations allow for a variety of ways that the origin information can be provided, such as placards, signs, labels, stickers, etc. Many retail establishments have chosen to use signage above the relevant sections of the meat case to provide the required origin information in lieu of or in addition to providing the information on labels on each package of meat. Under this final rule, the Agency will continue to allow the COOL notification requirements to be met by using signs or placards. For example, for meat derived from cattle born in Canada and raised and slaughtered in the United States, the signage could read ''Beef is from animals born in Canada, Raised and Slaughtered in the United States.''

In terms of using labels and stickers to provide the origin information, the Agency recognizes that there is limited space to include the specific location information for each production step. Therefore, under this final rule, abbreviations for the production steps are permitted as long as the information can be clearly understood by consumers. For example, consumers would likely understand ''brn'' as meaning ''born''; ''htchd'' as meaning ''hatched''; ''raisd'' as meaning ''raised''; ''slghtrd'' as meaning ''slaughtered'' or ''hrvstd'' as meaning ''harvested''. In addition, the current COOL regulations allow for some use of country abbreviations, as permitted by Customs and Border Protection, such as ''U.S.'' and ''USA'' for the ''United States'' and ''U.K.'' for ''The United Kingdom of Great Britain and Northern Island.'' This final rule retains that flexibility. To help educate consumers about the new requirements, the Agency will redesign its consumer brochures and use tools such as social media, etc.

Effective Date and Period of Education and Outreach

The effective date of this regulation is May 23, 2013, and the rule is mandatory as of that date. As the Agency explains below, it would be impracticable and contrary to the public interest to delay the effective date of the rule beyond May 23, 2013.

However, AMS understands that it may not be feasible for all of the affected entities to achieve 100% compliance immediately and that some entities will need time to make the necessary changes to achieve full compliance with the amended provisions for 100% of muscle cut covered commodities. Therefore, during the six month period following the effective date of the regulation, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. AMS has determined that this allocation of resources will ensure that the industry effectively and rationally implements this final rule.

In addition, it is reasonable to allow time for the existing stock of muscle cut covered commodities labeled in accordance with the 2009 COOL regulations that are already in the chain of commerce to clear the system. Therefore, the requirements of this rule do not apply to muscle cut covered commodities produced or packaged before May 23, 2013. The Agency believes that providing an education and outreach period and allowing existing stock to clear the chain of commerce is necessary to prevent retailer and supplier confusion and will help alleviate some of the economic burden on regulated entities.

Finally, the Agency recognizes that for some period of time following the period of education and outreach, existing label and package inventories may provide less specific origin information (e.g., Product of Country X and the U.S.). As long as retail establishments provide the more specific information via other means (e.g., signage), the Agency will consider the origin notification requirements to have been met until these existing label and package inventories have been completely used.

Comments and Responses

On March 12, 2013, the Agency published a proposed rule with a 30-day comment period. AMS received 936 timely comments from consumers, retailers, producers, wholesalers, foreign governments, distributors, trade associations, and other interested parties. The majority of commenters registered their support or opposition to the rule without providing specific substantive guidance or information to modify the rule text.

AMS received 453 comments, including four petitions signed by more than 40,000 individuals, which indicated that the proposed rule makes labels more informative for consumers. AMS also received 476 comments opposing the rule from numerous producer, packer, and international trading partner entities, as well as individual ranchers, packing companies and Foreign Government officials. The comments expressed opposition to the proposed rule due to concerns about the costs of implementation and the lack of quantifiable benefits to consumers. For the ease of the reader, the comments have been summarized by issue.

Executive Orders 13563 and 12866

Summary of Comments: Numerous commenters stated their belief that the proposed rule should be withdrawn in light of Executive Order (E.O.) 13563—Improving Regulation and Regulatory Review. The commenters contended that they believe the costs of the rule outweigh the benefits and, therefore, the standard of the E.O. is not being met. Another commenter contended that the proposed rule does not comply with E.O. 12866 based on the commenter's belief that there is no explanation of the need for the rule; that the cost/benefit analysis lacks meaning; and that there is no explanation of how regulation is consistent with the statute.

Agency Response: The Agency believes that the proposed rule and this final rule comply with both E.O. 13563

and E.O. 12866. The Act provides authority for the Secretary to promulgate regulations necessary to implement the COOL program. In addition, as explained previously, in order to implement mandatory country of origin labeling for certain meat products as required by statute, the Agency has made changes to the labeling provisions for muscle cut covered commodities. These changes provide consumers with more specific information and enhance the overall operation of the program. The Agency also expects that these changes will bring the mandatory COOL requirements into compliance with U.S. international trade obligations.

The proposed rule contained an executive summary of the rule, which included a statement of need. The Agency has conducted a cost benefit analysis, as required, and has modified the analysis based on the comments received. As noted in a subsequent response below, the Agency believes that this final rule is consistent with the statute.

Miscellaneous

Summary of Comments: Several commenters stated their belief that the proposed rule violates the First Amendment because it impermissibly compels commercial speech. The commenters argued that AMS has not stated an interest sufficient to require labeling of specific production steps as recommended in the proposed rule.

Agency Response: The Agency disagrees. The Act directs that a COOL program be implemented that provides consumers with country of origin information on specified commodities, including muscle cuts of meat. It also provides authority for the Secretary to promulgate regulations necessary to implement the COOL program. The Agency believes that the Act provides the authority to amend the COOL regulations to require the labeling of specific production steps in order to inform consumers about the origin of muscle cuts of meat at retail.

Summary of Comments: One commenter expressed concern that packers will need to maintain two label inventories—one for domestic use and one for export.

Agency Response: The COOL regulations apply to only those products sold at covered domestic retail establishments. Because various countries presently have different labeling and other requirements for accepting products exported from the United States, packers already utilize different labels for products destined for export (as well as for products destined for food service) than for products destined for the domestic retail market.

World Trade Organization

Summary of Comments: Several commenters expressed a wide range of views regarding the WTO dispute. Some commenters contended that the proposed rule will not bring the United States into compliance with its international trade obligations while other commenters contended that the proposed rule will satisfy U.S. trade obligations.

Agency Response: The Agency considers that this rule brings the United States into compliance with its international trade obligations. In the COOL dispute, the WTO affirmed that WTO Members have the right to adopt country of origin labeling requirements, in that providing such information to consumers about the products they buy is a legitimate government objective. However, the WTO had concerns with specific aspects of the current COOL requirements. In particular, the WTO considered that the current COOL requirements imposed record keeping costs that appeared disproportionate to the information conveyed by the labels. This final rule addresses those concerns of the WTO.

Statutory Authority

Summary of Commenters: Some commenters stated their belief that the proposed rule is not authorized by the statute. One commenter stated that the statute does not explicitly or implicitly allow USDA to require retailers to provide point of processing information; that the statute provides that labels must identify the origin of category C covered commodities as the country from which it was imported and the United States; and that, applying the whole statute rule, categories A and B must be labeled in the same manner as categories C and D.

Agency Response: The Agency believes this rule is consistent with the statute and that the Act provides authority for the Secretary to promulgate regulations necessary to implement the COOL program. The statute contemplates four different labeling categories for meat, based on where the animal was born, raised, and/or slaughtered. This final rule preserves these four different labeling categories for meat and is consistent with the labeling criteria set forth in the statutory scheme.

Effective Date and Period of Education and Outreach

Summary of Comments: Several commenters stated that the effective date of the rule should be delayed until it is known whether the WTO considers the final rule to be compliant with U.S international trade obligations. Other commenters recommended that the effective date should be the latter of 180 days after the WTO ruling or the publication of the final rule. Another commenter recommended that the effective date should be 18 months to 2 years after publication of the final rule. With regard to enforcement, another commenter stated their opinion that the industry needs 12–18 months to comply with the final rule due to livestock commitments. Another commenter suggested that companies need 12 months to work through existing inventory of labels.

Agency Response: The effective date of this regulation is May 23, 2013, and the rule is mandatory as of that date. As the Agency explains below, it would be impracticable and contrary to the public interest to delay the effective date of the rule beyond May 23, 2013.

However, and as discussed previously, the Agency determined that an industry education and outreach program concerning the provisions and requirements of this rule is appropriate. The Agency believes that a six month period, as was provided for in the August 1, 2008, interim final rule (73 FR 45106) and the 2009 final COOL rule, is sufficient time for retailers and suppliers to become educated on and fully transition over to the new requirements of the final rule.

Both during this six month period and beyond, the Agency will continue to educate retailers and suppliers on the Agency's compliance and enforcement procedures so that the regulated industries have clear expectations as to how the Agency will enforce this rule. With regard to working through existing packaging inventories, this final rule does not require covered commodities to be individually labeled with COOL information. As discussed previously, retailers can use placards and other signage to convey origin information. In addition, as also previously discussed, it is reasonable to allow time for the existing stock of muscle cut covered commodities labeled in accordance with the 2009 COOL regulations that are already in the chain of commerce to clear the system. Therefore, the requirements of this rule do not apply to muscle cut covered commodities produced or packaged before May 23, 2013.

Labeling

Summary of Comments: Several commenters stated their belief that retailers and suppliers should not have

to list production step information for U.S. origin products. Other commenters stated their belief that requiring production step information is too onerous and that consumers do not desire this information. Another commenter stated that the rule will cause product labels to mislead consumers and referenced the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*). The commenter further stated that consumers will be confused by imported meat products bearing an ''inspected & passed'' sticker. Another commenter recommended that chicken should be labeled ''hatched'' instead of ''born.'' This commenter as well as other commenters stated their opposition to having to use the term ''slaughtered.'' The commenters suggested alternatives to the term ''slaughtered'' that consumers may find more acceptable including ''harvested'' or ''processed.''

Agency Response: Numerous comments received on this and previous COOL rulemaking actions indicate that there clearly is interest by certain U.S. consumers in the country of origin of food they purchase, including the production step information that retailers must provide pursuant to this final rule. The Agency also considers that providing this more specific information regarding the country in which each production step occurred is consistent with the COOL statute. The Agency further considers that the rule will bring the United States into compliance with its international trade obligations.

In addition, current country of origin labeling for imported meat products follows pre-existing regulations, including those of the U.S. Customs and Border Protection, regarding the origin of imported products. Further, the ''inspected and passed'' sticker is applied under the FMIA by FSIS inspectors and does not relate to the COOL program. The Agency is not aware that the requirements set forth in the 2009 final rule are causing any confusion among consumers related to meat products sold with the ''inspected and passed'' label. In any event, as noted above, this final rule does not change existing COOL labeling requirements for imported meat products nor does it alter the ''inspected and passed'' sticker. As such, there is no reason to believe that this rule will cause confusion related to the ''inspected and passed'' sticker among consumers.

With regard to chicken products, the current COOL regulations define the term ''born'' with respect to chicken as ''hatched.'' Accordingly, it is permissible to utilize the term ''hatched'' in origin designations for chicken products under this final rule. The Agency has included additional language in this preamble to clarify this point. With respect to the suggested alternatives that may be more acceptable to consumers, the 2009 COOL regulations permit the use of the term ''harvested'' in lieu of ''slaughtered.'' As discussed previously, this flexibility will continue to be allowed under this final rule.

Definition of Retailer

Summary of Comments: One commenter provided extensive comments on both the definition of a retailer in the current COOL regulations and the definition of a retailer in the proposed rule. The commenter stated their belief that AMS should not use the definition that is contained in PACA regulations and further stated that AMS should develop its own definition. The commenter provided specific recommendations, including using a definition similar to the one used by the Supplemental Nutrition Assistance Program (SNAP), which is administered by USDA's Food and Nutrition Service. Another commenter stated their support for the proposed rule's definition change and indicated that the change will make the definition less ambiguous.

Agency Response: The COOL statute defines the term ''retailer'' as having the meaning given the term in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)). Therefore, the Agency does not have the authority to develop an alternative definition based on SNAP as it is not consistent with the COOL statute. As stated in the March 12, 2013, proposed rule, the Agency believes that the revised definition of a retailer more closely mirrors the definition in the PACA and agrees that this definition is less ambiguous. Accordingly, the Agency has not adopted the alternative recommendations.

Recordkeeping

Summary of Comments: Several commenters stated that they were unclear as to whether current producer affidavits systems will satisfy the regulatory requirements of the proposed rule.

Agency Response: The proposed rule did not alter the recordkeeping requirements of suppliers or retailers. Therefore, the use of affidavits for conveying origin information is still permitted under this final rule.

Raised

Summary of Comments: Several commenters suggested that the Agency redefine the term ''raised'' to refer to the period of time encompassing a majority of an animal's life. The commenters further stated that compared to the retail value of beef, time spent in another country, i.e., country of birth, could be considered *de minimus.* Another commenter stated that retailers should be required to list all countries of raising. Lastly, one commenter asked for clarification of the phrase ''minimal raising,'' which was used in the proposed rule.

Agency Response: The COOL regulations define the term ''raised'' as ''the period of time from birth until slaughter or in the case of animals imported for immediate slaughter as defined in section 65.180, the period of time from birth until date of entry into the United States.'' The proposed rule did not recommend a change to this definition; therefore, the suggestion to modify the definition of the term ''raised'' is outside the scope of this rulemaking. With regard to the request to clarify the phrase ''minimal raising,'' that phrase does not appear in the COOL regulations, and the Agency believes that the language in the existing regulatory text provides readers with a clear definition of the term ''raising.'' Regarding the suggestion to require that all countries of raising be listed on the label, the Agency believes this final rule provides more specific information to consumers with regard to the place of raising in sufficient detail. However, the Agency has added language to this preamble to further explain the regulatory text in § 65.300(e).

Miscellaneous

Summary of Comments: Several commenters stated that the proposed rule runs counter to the shared U.S.-Canada vision of the Regulatory Cooperation Council (RCC) initiative.

Agency Response: As explained previously, in order to implement mandatory country of origin labeling for certain meat products as required by statute in a manner consistent with U.S. WTO obligations, the Agency has made these changes to the labeling provisions for muscle cut covered commodities, which provide consumers with more specific information and enhance the overall operation of the program. The United States values its relationships with its trading partners and is committed to looking for ways to improve regulatory transparency and coordination with Canada as described in the RCC Joint Action Plan.

Summary of Comments: Several commenters stated their opinion that there is no regulatory solution that will bring the United States into compliance

with its international trade obligations. The commenters further stated that the United States should seek a legislative change.

Agency Response: As discussed above, the Agency considers that this final rule constitutes compliance with the WTO DSB's recommendations and rulings.

Summary of Comments: One commenter suggested that the Agency should expand the civil rights review statement to ensure that it is as broad as possible. The commenter specifically requested that the Agency remove the phrase ''. . . on minorities, women, or persons with disabilities'' from the statement.

Agency Response: USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex (including gender identity and expression), marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. The Agency has modified the civil rights review statement as the commenter suggested by removing the phrase in question and using ''protected groups'' in its place.

Alternatives

Summary of Comments: A number of commenters suggested alternatives to the proposed rule, including: COOL should be voluntary; country of origin should be where an animal is processed; and COOL should be based on substantial transformation (recognizing need for statutory change). Another commenter suggested that the enforcement of COOL should be reduced and gave several specific examples.

Agency Response: The alternative labeling programs suggested by the commenters are not authorized by the COOL statute, which provides for a mandatory COOL program and four distinct categories of origin designations for muscle cut covered commodities. Accordingly, these suggestions are not adopted. With regard to the suggestions to reduce the enforcement of the COOL program, this is not within the scope of this rulemaking. The Agency notes, however, that it plans to review its current enforcement procedures to determine if changes should be made.

Summary of Comments: A number of commenters provided recommendations that are outside the scope of the proposed rule, including: Food establishments should be covered because 48% of spending on food occurs at restaurants; the definition of processed should be narrowed such that more products are covered; turkey should be a covered commodity; the definition of ground beef should be narrowed; COOL is not food safety related and the Agency should clarify that mislabeling will not result in a recall; the Agency should disallow the 60-day inventory allowance for ground meat; the Agency should remove the burden on producers of requiring affidavits.

Agency Response: Because these recommendations are outside the scope of this rulemaking, they will not be considered.

Costs and Benefits

Proposal Adds Significant Costs

Summary of Comments: Several commenters stated their belief that the recordkeeping and verification processes necessitated by the proposed rule will be more onerous, disruptive, and expensive than the current regulations. The commenters further contended that the costs of new labels and printers and other equipment, together with increased needs to segregate livestock and the need to make new investments in trucks, processing lines and coolers will add cost to all segments of the production chain.

Other commenters agreed with the Agency's estimates contained in the proposed rule and noted that the incremental cost associated with the proposed labeling changes is only a slight increase over the initial COOL compliance cost estimates contained in the final rule implementing the program. One commenter noted that the proposed rule does not require the collection of additional information and that the primary added costs are associated with changing the labels. Another commenter pointed out that there will be no additional recordkeeping requirements as a result of the proposed rule and that additional labeling costs are concentrated almost entirely at the retail level.

Agency Response: As discussed further in the Regulatory Impact Analysis (RIA), the Agency agrees that there will be additional costs associated with this final rule, although only those muscle cut covered commodities subject to COOL requirements will be affected by the changes in this final rule. Those costs will be incurred by processors and retailers as they adjust to the loss of commingling flexibility and to the new labeling requirements in this final rule. It is necessary, however, to ensure label information accurately reflects the origin of muscle cut covered commodities in accordance with the intent of the statute while complying with U.S. WTO obligations.

That said, the Agency does not agree that additional recordkeeping or verification processes will be required to transfer information from one level of the production and marketing channel to the next. There are no recordkeeping requirements beyond those currently in place, and the Agency believes that the information necessary to transmit production step information is already maintained by suppliers in order to comply with the current COOL regulations. As with the current mandatory COOL program, this final rule contains no requirements for firms to report to USDA. Compliance audits will continue to be conducted at firms' places of business.

In addition, the Agency has sought to minimize the cost to industry at each step of the marketing process. For example, the Agency has clarified that retailers may continue to utilize existing label and package inventories, as long as retail establishments convey the more specific information concerning the location where the production steps occurred via other means (e.g., signage). This will reduce the costs of switching over to the new labels. The Agency further recognizes that there is limited space to include the specific location information for each production step. Therefore, to reduce the potential need for new printers and other equipment, under this final rule, abbreviations for the production steps are permitted as long as the information can be clearly understood by consumers. The Agency also notes many retail establishments have chosen to use signage above the relevant sections of the meat case to provide the required origin information in lieu of or in addition to providing the information on labels on each package of meat.

The Agency further considers it reasonable to allow time for the existing stock of muscle cut covered commodities labeled in accordance with the 2009 COOL regulations that are already in the chain of commerce to clear the system. Therefore, the requirements of this rule do not apply to muscle cut covered commodities produced or packaged before May 23, 2013.

Finally, while the requirements of this rule are mandatory as of the effective date, because AMS understands that it may not be feasible for all of the affected entities to achieve 100% compliance immediately and that some entities will need time to make the necessary changes to achieve full compliance with the amended provisions for 100% of

muscle cut covered commodities, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule during the six month period following the effective date of the regulation, as was provided for in the 2008 interim rule and the 2009 final rule. AMS has determined that this allocation of enforcement resources will ensure that the industry effectively and rationally implements this final rule. With regard to costs related to the elimination of commingling flexibility, the Agency has responded to these issues in a subsequent response below.

Processors' Cost of Segregation

Summary of Comments: Numerous commenters provided statements on the costs of segregating livestock they believe will be necessitated by the proposed rule. These commenters explained how, in their opinion, the labeling changes will require additional livestock and meat segregation and record keeping that will increase costs to the industry that must be absorbed by livestock producers, feedlots, shippers, meat packers, processors, retailers and consumers.

One commenter stated that the segregation of cattle and beef carcasses within the packing plant requires unique operational procedures. The commenter further contended that current packing plants were neither designed for nor constructed in a manner to allow for efficiency in the segregation of cattle and beef.

Several commenters stated their belief that the costs of segregating livestock would adversely affect their businesses due to the need to increase hiring and worker hours as well as make large capital investments to accommodate the demands of segregation. In addition, the commenters stated that they would experience an increase in maintenance costs for contracted information technology services to track the additional information required by the proposed rule in company databases.

Another commenter presented an analysis showing how eliminating commingling would significantly impact slaughter and processing facilities now using commingling flexibility, as well as the rest of the downstream supply chain. The commenter contended that increased annual operating costs for the fed cattle and hog processing industries would range from $97.9 to $132.6 million due to the elimination of commingling. The commenter opined that the prohibition on commingling could have an even greater adverse impact on smaller packers, providing one example of a very small cattle slaughter company (fewer than 100 employees) that currently commingles production. According to the commenter's estimate, elimination of commingling would impose an additional $275,000 in costs annually on this company, which is approximately the company's annual profit.

Another commenter stated that there would be significant costs resulting from the need to reconfigure processing plants to segregate product by origin for those plants currently commingling. The commenter stated that estimates of capital costs for beef slaughter and processing operations ranged from $20 to $50 million and from $12 million to $25 million for hog slaughter and processing operations for those plants currently commingling.

Other commenters stated that the proposed rule will add only modest costs to the industry. The commenters pointed out that, as noted in the 2009 COOL regulations, segregating animals by origin can be accomplished through processes that are essentially the same as those that firms already use to sort animals by weight, grade, and other factors. In addition, the commenters stated that strengthening the origin labels in this manner can be achieved without imposing significant additional recordkeeping or verification requirements, as producers are already required to track the origin of animals from which meat is derived.

Agency Response: As previously discussed, no additional recordkeeping is required by this final rule, and no new processes need be developed to transfer information from one level of the supply chain to the next. The information necessary to transmit production step information should already be maintained by suppliers in order to satisfy the 2009 COOL regulations.

With respect to additional operational costs anticipated from the elimination of the commingling flexibility, the Agency has modified its analysis to account for these estimated costs. As noted by commenters, the elimination of this flexibility may require adjustments to plant operations, line processing, product handling, storage, transportation, and distribution for those companies that commingle. As discussed in the RIA, commenters to the proposed rule submitted anecdotal information indicating that commingling flexibility is used by some packers. However, the information provided was insufficient to enable the Agency to determine the extent to which industry is making use of commingling flexibility. As discussed in the RIA, the Agency estimates that the current use of the flexibility likely falls within a range of five to 20 percent of the production of beef and pork muscle cut covered commodities, although it is likely that the extent to which packers are commingling is closer to the lower end than the higher end of the range.

As also discussed in the RIA, the Agency estimates that adjustment costs due to elimination of commingling will range between $19.0 million and $76.3 million in the processing sector and between $17.1 million and $68.5 million in the retail sector (see table 3). The Agency believes these estimates, however, are likely to overstate actual adjustment costs over time. The Agency anticipates that intermediaries will develop ways to minimize down time and processing line changes and that, ultimately, a mix of solutions will be implemented by industry participants to effectively meet the requirements of the final rule. Over the long run, the Agency believes that initial adjustment costs are not likely to persist and that firms will continue to seek methods for efficient production and marketing of the affected products.

Processors' Ability To Source Animals

Summary of Comments: Several commenters discussed the sourcing of animals and the impact the proposed changes will have on these practices. The commenters contended that animals from other countries are used to supplement domestic sources, often on a seasonal basis, and that the proposed rule's new requirements may add sufficient burden that this form of sourcing is no longer economically viable.

One commenter stated concern that his business will suffer because current customers will no longer purchase his company's meat products, which are sometimes sourced from Canadian cattle, because the customers will now have to change all of their labeling. Two commenters stated that the proposed rule gives an unfair advantage to those producers who do not rely on Canadian pigs. A commenter suggested this would create incentives for U.S. processors to use U.S. livestock over imported livestock. Another commenter contended the proposed rule's new requirements would cause the processing industry in Canada to expand at the expense of jobs in the United States.

Agency Response: All labels for muscle cut covered commodities produced in the United States must bear information related to the location of birth, raising, and slaughter. Therefore, all affected retailers and packers will

have to change their labeling practices to conform to this final rule, regardless of the origin of the animal from which their muscle cut covered commodities are derived. Accordingly, while the industry will incur costs for augmenting the label, those particular costs will be borne by all industry participants, regardless of their sourcing decisions.

With regard to commingling, the Agency recognizes that those packers that are commingling will incur additional costs in complying with this rule. However, removing the commingling allowance lets consumers benefit from more specific and detailed labels. Moreover, given that the current COOL requirements already compel retailers to differentiate muscle cut commodities based on origin, the Agency does not believe there is a sufficient basis to definitively conclude that this rule, which continues to require retailers to make that same differentiation based on origin (albeit with more specific labels), will affect purchasing decisions of industry participants or give an unfair advantage to any particular participants.

Retailers' and Wholesalers' Costs

Summary of Comments: Some commenters discussed the additional cost related to retraining associates at their stores, replacing scales, and upgrading distribution systems to allow for the tracking of COOL related information for invoices and manifests.

Several commenters stated that the proposed rule will require retailers to double the number of words on the retail label. For example, a product currently labeled ''Product of the US'' would have to be labeled ''Born, Raised and Slaughtered in the US.'' Those commenters also contended that the more likely result will be that retailers will make an economic decision to purchase only meat from animals born, raised and slaughtered in the U.S. to reduce their risk of inadvertently not complying with this rule. An additional commenter made the point that one of the reasons the current scale systems have less space remaining is due to the implementation of mandatory meat nutrition labeling.

One commenter stated their opinion that certain retailers repack muscle cuts and that the revised labeling requirements would impose an additional layer of complexity and cost from redoing labels, maintaining more complex records and recordkeeping systems, buying new equipment and software, and employee training.

Another commenter that supplies independent stores indicated that the commenter's present software will not allow it to comply with the new rule, and that its stores will need new equipment or must use a second label.

Another commenter stated that the COOL law currently imposes enormous burdens on the supermarket industry and specifically the wholesale industry. The commenter believed that should the proposed rule be adopted, packers will need to document the country or countries with ''all of the production steps'' on the master case and bill of lading and will need to validate proper COOL labeling prior to selling product to their customers. The commenter contended that this will create another step in their receiving process at the warehouse.

An industry association stated that the proposed rule makes substantial changes to COOL requirements that will result in market and supply dislocations and will adversely affect jobs, business operations, and international trade. The commenter stated that a large volume of product is still subject to costly labeling in retail stores and reported that costs would vary, depending on whether retailers could accommodate the additional language required by the proposed rule on current label sizes and existing printers. The commenter also noted the cost of liquidating old labels.

Another commenter stated that because imported products will now have to be separated under the proposal, the cost of U.S. products sold to supermarkets will go up, and imported product will be sold through foodservice channels like restaurants where it will not have to be labeled and likely will be sold at a cheaper price.

Agency Response: The Agency recognizes that additional costs will be borne by industry participants. Estimates of those costs include adjustment costs to processors and retailers due to losing the flexibility to commingle muscle cut covered commodities for purposes of COOL. In addition, the estimated costs include adjustments due to the need to change the labels currently in place. As discussed in further detail in a prior response, the Agency has, to its best ability, sought to minimize the cost to industry at each step of the marketing process, including allowing abbreviations to be used on the new labels.

The Agency further notes that the existing COOL regulations already require retailers to maintain records and other documentary evidence upon which they have relied to establish a covered commodity's country or countries of origin. Similarly, any person directly or indirectly engaged in the business of supplying a covered commodity to a retailer, including wholesalers, must make available information to the buyer about the country(ies) of origin of the covered commodity. Thus, to comply with existing COOL regulations, wholesalers must already have distribution systems to allow for the tracking of COOL-related information for invoices and manifests and receiving procedures to verify the origin information received from packers and processors. This final rule does not alter those requirements, and, accordingly, no new records are required of retailers or wholesalers. As such, the Agency does not agree that a retailer using a mixed origin label would be more likely to find itself inadvertently out of compliance with this rule than it would when using a mixed origin label under the 2009 COOL regulations.

Producer Impacts

Summary of Comments: Many commenters expressed concern that U.S. cattle producers are facing burdens that adversely impact profitability and the viability of their operations. Concerns include the continuing drought conditions across much of the country's cattle producing areas. These commenters observed that drought-induced liquidation of cattle has driven the national beef herd down to the lowest cattle numbers in 60 years. As a result, the commenters asserted that the beef industry must continue to use other feeder cattle procurement possibilities.

One commenter asserted that without these added imported animals in the U.S. herds, the United States would face a large shortage because of the shrinking supply in the United States. The commenter stated that it ships Canadian-sourced cattle an extra 300 miles to a plant that processes Canadian cattle, even though the company is located only 45 miles away from a plant owned by the same processing company that does not process Canadian cattle. The commenter also suggested that the beef produced from imported Mexican feeder cattle should be treated as U.S. beef, since the value of the imported animal is relatively minimal compared to the retail value of the beef from the finished animal once it undergoes substantial transformation into fed beef in the United States.

One commenter expressed concerns about the effects of any trade retaliation that might be implemented by either Mexico or Canada. The commenter was also concerned that retailers may decide to reduce or eliminate sales of pork rather than implement systems necessary to comply with the proposed labeling requirements.

One commenter stated that its members support the rule change and are already very well versed with providing affidavits at point of sale and other documentation to verify the origin of their livestock as needed in order to assure supplier and retailer compliance with COOL. The organization does not have concerns that this rule will cause members any additional hardships.

Another commenter stated that the only industry actor that cannot pass along the costs of doing business in the meat sector is the livestock producer. The commenter stated that compared to the impact that drought has had on feed costs for beef producers, the cost of labeling for food retailers is negligible and that the revised labeling requirements will provide necessary information to consumers.

Agency Response: USDA recognizes the hardship imposed on the U.S. livestock industry due to the recent drought and has addressed this issue to the greatest extent possible through authorized means. The drought has also reduced the size of the Mexican cattle herd and made fewer animals available for export to the United States.

The Agency recognizes that additional costs will be borne by industry participants as they comply with the requirements of this final rule. However, the Agency believes it is necessary to ensure label information more accurately reflects the origin of muscle cut covered commodities in accordance with the intent of the statute while complying with U.S. WTO obligations. As the Agency has noted, the requirement to include this information will apply equally to all muscle cut covered commodities derived from animals slaughtered in the United States, regardless of where the animal was born or raised. The Agency does not believe that these requirements will prevent the U.S. industry from continuing to purchase animals from Canada or Mexico.

With regard to costs borne by the U.S. industry, and as discussed in a prior response, the Agency has sought to minimize the cost to industry at each step of the marketing process. This final rule does not lessen any existing flexibility in how required country of origin information is currently conveyed along the supply chain. The Agency's goal is to enable firms to implement the requirements of this final rule with the least possible disruption to cost-efficient production methods.

Rural Economy/Miscellaneous

Summary of Comments: Some commenters expressed concern about the state of the economy, particularly the rural economy, and the impact the rule might have regarding loss of jobs. For example, one commenter stated that with around 2,000 employees in a typical meat processing plant, it is important not to jeopardize these jobs. Another commenter expressed concern about the elimination of thousands of jobs in rural America at a time when jobs are badly needed.

Agency Response: USDA supports strong rural economies. Through various programs, including USDA's Rural Development, the USDA provides assistance to rural communities. USDA also supports the creation of jobs in this industry, including through the opening of foreign markets for U.S. agricultural exports, including beef and pork. For example, in January, USDA and the United States Trade Representative announced that the United States and Japan have agreed on new terms and conditions that pave the way for expanded exports of U.S. beef and beef products to Japan. Under these new terms, which are now in effect, Japan now permits the importation of beef from cattle less than 30 months of age, compared to the previous limit of 20 months, among other steps. It is estimated that these important changes will result in hundreds of millions of dollars in exports of U.S. beef to Japan in the coming years.

That said, the Agency recognizes that additional costs will be borne by industry participants as a result of this final rule. However, the Agency believes it is necessary to ensure label information more accurately reflects the origin of muscle cut covered commodities in accordance with the intent of the statute while complying with U.S. WTO obligations. At the same time, as discussed in a prior response, the Agency has sought to minimize the cost to industry at each step of the marketing process. As previously stated, the Agency's goal is to enable firms to implement the requirements of this final rule with the least possible disruption to cost-efficient production methods. This final rule does not lessen existing flexibility in how required country of origin information is currently conveyed along the supply chain.

Benefits

Summary of Comments: Some commenters expressed their support for the proposed rule on the grounds that the proposed labeling requirements provide consumers with information they need to make informed choices about the source of food and how it was raised. The commenters stated that there is increased consumer demand to know where and how food is produced.

Some commenters stated that consumer confidence benefits can accrue just as a result of having the information available, even if the consumers do not read the labels' information. In the opinion of some commenters, mandatory labels address concerns of market failure and fraudulent labeling and help investigators trace-back foodborne illness outbreaks. A commenter referenced a 2005 survey that found that nearly two-thirds of consumers (60 percent) preferred country of origin labeling to be administered by a government policy rather than by companies marketing the meat.

Some commenters stated their belief that consumers can differentiate various attributes of competing products and will increase demand, and price, for those attributes they view favorably, including the perceived higher quality of meat derived from animals born, raised and slaughtered in one country rather than another country.

Other commenters provided additional rationale and references to studies indicating consumers benefit from food origin information. The commenters noted there have been numerous polls and studies demonstrating that consumers value origin information regarding the food that they buy, including meat, including a national poll in 2007 that found that 94 percent of those surveyed believed that consumers have a right to know the country of origin of the foods that they purchase, and 85 percent of consumers say knowing where their food comes from is important.

Commenters also referenced a study showing that consumers are willing to pay more for a more precise, country-specific label than for a less precise, mixed-origin label. The commenters noted that mixed-origin labels may be affixed to exclusively U.S. origin product due to the commingling flexibilities in the current program and that eliminating the commingling flexibility and ensuring that single-origin product is accurately labeled will therefore benefit consumers who value being able to purchase products with more precise label information.

Other commenters noted that the Agency did not offer an estimate of any additional benefits from the proposed rule, noting only that the Agency had ''been unable to quantify incremental economic benefits from the proposed labeling of production steps . . . .'' These commenters shared a belief that the Agency's analysis is consistent with recent work on COOL, which has generally failed to document any demand-side benefits from the program.

Numerous commenters stated that there is little evidence that consumers benefit from country of origin labeling and referred to a recent study by Kansas State University and Oklahoma State University [1] which found no demand increase following the implementation of the mandatory COOL program in spite of previous research suggesting consumers would pay more for products carrying origin information. The study concluded that consumers do not value meat products carrying Product of United States labels over those with Product of North America labels and that economic gains would occur by utilizing the latter, less expensive, labeling requirement.

One commenter stated their belief that there is no evidence that consumers base their buying decisions on the source information currently available through the COOL program. The commenter stated that the market has demonstrated and fulfilled the existing limited demand for such information through the success of local production systems, farmers markets, source-verified programs and ''USA'' branded programs. The commenter believed that there is a strong argument that the promulgation of this rule will actually erode these market-driven, premium source-verified programs because it will erode the differentiation they currently own in the marketplace.

One commenter asserted that the Agency has failed to quantify the benefits arising from the promulgation of the proposed rule and that the costs of the proposed rule clearly outweigh any benefits. The commenter cited a study of shrimp purchases [2] which found no difference between consumer purchases before the implementation of COOL and those after it went into effect, quoting from a USDA publication [3] that ''the implications of the research suggest that price is a more important determinant of buyer behavior than COOL, a finding consistent with various consumer surveys.''

Agency Response: As discussed more fully in the RIA, the many comments the Agency has received noting the proposed rule's benefits to consumers reinforce the Agency's original conclusion that implementing the proposed label changes will in fact benefit consumers. These comments demonstrate that there is interest by certain U.S. consumers in information disclosing the countries of birth, raising, and slaughter on muscle cut product labels. Specifying the production step occurring in each country listed on meat labels and eliminating the commingling flexibility as required by this final rule will benefit consumers by providing them with more specific information on which to base their purchasing decisions. The Agency does not agree that this rule will negatively impact the value of premium source-verified programs. The 2009 COOL regulations already differentiate covered muscle cut commodities based on origin. This final rule ensures that the labels will provide the consumers more specific information. Premium source-verified programs are thereby unaffected by this rule.

The Agency acknowledges that an empirical finding of a change in demand due to COOL would support the conclusion that consumers act on the information provided through COOL. Conversely, however, the Agency does not concur that an empirical finding of no change in demand implies that consumers do not value the information or that there are no benefits from providing the information; it may instead imply that the economic benefits are positive but too small to be measurable in a general-population study. The purpose of COOL is to provide consumers with information upon which they can make informed shopping choices. The availability of COOL information does not imply that there will necessarily be any change in aggregate consumer demand or in demand for products of one origin versus others.

Comments received on the proposed rule do not alter the Agency's conclusion that the expected benefits from implementing mandatory COOL requirements remain difficult to quantify and that the incremental economic benefits of this final rule will be comparatively small relative to those afforded by the current COOL requirements.

Regulatory Flexibility Analysis

Summary of Comments: The effects of the proposed rule on small meat plants were described by several commenters including trade associations and individual plant operators. As noted previously, one commenter stated that the prohibition on commingling could have an even greater adverse impact on smaller packers, providing one example of a very small cattle slaughter company (fewer than 100 employees) that currently commingles production. According to the commenter's estimate, elimination of commingling would impose an additional $275,000 in costs annually on this company, which is approximately the company's annual profit.

A commenter stated that many small and very small establishments will need to expand their infrastructure and hire more employees to maintain segregation of carcasses on the slaughter floor and of product in the coolers. One commenter summarized that small meat processing firms estimated their costs to implement the revisions will range from $5,000 on the low end to tens of thousands of dollars on the high end. Several small-scale, local and regional packing plants commented individually and collectively that they do not have the flexibility to segregate and label three different sources of cattle, create different product categories for each (potentially adding 600 times the number of product codes), and segregate the customers as well. The commenters stated that there will be a significant advantage to the larger packing companies that can isolate different categories of consolidation of the industry. The commenters claimed that the vast majority of plants, particularly the small to medium size plants, that purchase cattle from different origins apply the commingling practice. Commenters stated that smaller plants will be forced out of business because of their inability to utilize all sources of the cattle supply, leading to more consolidation and packer concentration with significant negative impacts on suppliers and customers.

One beef packer commented that 2009 COOL regulations forced its customers to accept two SKUs of every item the company sold to them, one labeled Product of USA and the other labeled Product of USA, Mexico. The commenter stated that several of the smaller independent grocery customers indicated that they simply could not handle that many SKUs in their distribution warehouses and in their invoicing and record keeping systems. These retailers told the commenter to choose one or the other or they would have to find other suppliers. The commenter stated that the proposed rule requires even more segregation and even more duplication of labels and SKUs, noting that this may be possible for a large packer and a large retailer but it is extremely difficult and restrictive for a small operator.

Agency Response: As previously discussed, no additional recordkeeping is required by this final rule. Processes currently in place to transfer

[1] Tonsor, Lusk et al. Mandatory Country of Origin Labeling: Consumer Demand Impact, November 2012 *http://www.agmanager.info/livestock/policy/Tonsor_KSU_FactSheet_MCOOL_11-13-12.pdf.*

[2] ''Do Consumers Respond to Country-of-Origin Labeling?'' by Fred Kuchler, Barry Krissoff, and David Harvey, in *Journal of Consumer Policy,* 2010, Vol. 33, pp. 323–337.

[3] *http://www.ers.usda.gov/amber-waves/2012-june/consumers-appear-indifferent.aspx.*

information from one level of the supply chain to the next should be sufficient to accommodate the additional requirements of this rule. With respect to additional operational costs anticipated from the elimination of the commingling flexibility, the Agency has modified its analysis to account for these estimated costs. Over the long run, the Agency believes that initial adjustment costs are not likely to persist and that firms will continue to seek methods for efficient production and marketing of the affected products.

The Agency notes that comments referencing changes and adjustments to production and marketing practices already in place to comply with the 2009 COOL requirements should not be ascribed to the amendments set forth in this final rule.

With regard to commingling, the Agency recognizes that those packers that may currently be commingling will incur additional costs in complying with this rule. However, removing the commingling allowance lets consumers benefit from more specific and detailed labels. That said, there is no clear indication that adjustment will be more difficult for smaller versus larger packers. As noted in the comments and responses to the economic impact analysis, packers already have systems in place for handling and sorting livestock and resultant muscle cuts according to various criteria such as grade, weight, and other factors. Adjustment to the final rule should be able to be accomplished in a similar manner.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as an ''economically significant regulatory action'' under section 3(f) of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This final rule amends the COOL regulations (1) by changing the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and (2) by amending the definition for ''retailer'' to include any person subject to be licensed as a retailer under PACA to enhance the overall operation of the program and to bring the COOL requirements into compliance with the United States' WTO obligations.

Statement of Need

Justification for this final rule remains unchanged from the 2009 final rule. This rule, as with the 2009 final rule, is the result of statutory obligations to implement the COOL provisions of the 2002 and 2008 Farm Bills. There are no alternatives to federal regulatory intervention for implementing this statutory directive.

The COOL provisions of those laws changed federal labeling requirements for muscle cuts of beef, pork, lamb, goat, and chicken; ground beef, ground pork, ground lamb, ground goat, and ground chicken; wild and farm-raised fish and shellfish; perishable agricultural commodities; ginseng; peanuts; macadamia nuts; and pecans (hereafter, covered commodities). As described in the 2009 final rule, the conclusion remains that there does not appear to be a compelling market failure argument regarding the provision of country of origin information.

Comments received on the 2009 final rule and previous requests for comments elicited no evidence of significant barriers to the provision of this information other than private costs to firms and low expected returns. Thus, from the point of view of society, such evidence suggests that market mechanisms could ensure that the optimal level of country of origin information would be provided to the degree valued by consumers.

Analysis of Benefits and Costs

As set forth in the initial analysis of benefits and costs, the baseline for this analysis is the present state of the beef, chicken, goat, lamb and pork industries, which have been subject to the requirements of mandatory COOL (7 CFR parts 60 and 65) since the effective date of the final rule on March 16, 2009.

Benefits: Comments on the initial regulatory impact analysis for the proposed rule (78 FR 15647) as well as on previous COOL rulemaking actions, reinforce the Agency's conclusion that the final rule's amendments to the COOL labeling requirements will benefit consumers. Numerous comments supported the proposed rule and confirmed that certain U.S. consumers value the designation of the countries of birth, raising, and slaughter on meat product labels. These attributes of meat products are credence attributes, meaning that otherwise consumers would not be able to obtain information on or verify by inspection of the product at the point of purchase. Economic theory shows that unregulated markets may undersupply information on such credence attributes. Specifying the production step occurring in each country listed on meat labels as provided in this rule will provide additional benefits by providing more specific information on which consumers can base their purchasing decisions. Furthermore, information on the production steps in each country may embody latent (hidden or unobservable) attributes, which may be important to individual consumers and result in additional but hard to measure benefit increases. The Agency, however, has not been able to quantify this benefit, as singling out the value of those additional latent attributes and the resultant consumer benefit increases would require complicated modeling techniques that none of the available studies utilized.

The final rule also eliminates the allowance for commingling of muscle cut covered commodities of different origins. As discussed above, the rule requires all origin designations to include specific information as to the place of birth, raising, and slaughter of the animal from which the meat is derived and no longer allows a single mixed origin label to be used on muscle cuts derived from animals of different origins commingled during a single production day. Removing the commingling allowance will benefit consumers by resulting in more specific labels.

The Agency observes that the comments it has received on the proposed rule reinforce the Agency's conclusion that the expected benefits from implementing the final rule's amendments to the existing COOL labeling requirements are difficult to quantify, as no commenters provided quantified assessments of the benefits. Moreover, the comments received do not alter the Agency's conclusion that the incremental economic benefits from the labeling of production steps will be positive, but likely will be comparatively small relative to those already afforded by the 2009 COOL final rule.

Costs: A number of commenters directly addressed or provided information related to the Agency's estimated costs of the proposed rule. Most of these commenters asserted that

the Agency underestimated implementation costs, mainly by omitting costs associated with activities that commenters said would be required to comply with the proposed amendments to the current COOL regulations. The revised cost estimates below take into account these comments.

The Agency believes that there are two primary cost drivers that will be incurred as firms adjust to the amendments to the 2009 COOL regulations. First, muscle cut covered commodity COOL information will need to be augmented to provide the additional specific origin information required by this rule. Second, those firms currently using the flexibility afforded by commingling livestock of more than one origin on a single production day will need to adjust to the new requirement to provide origin information on the birth, raising, and slaughter of the muscle cut covered commodities derived from livestock of each origin. Moreover, the new requirements preclude the use of commingling flexibility.

With respect to commingling, the initial analysis of costs sought ''comment and data regarding the extent to which the flexibility afforded by commingling on a production day is used to designate the country of origin under the current COOL program and the potential costs, such as labor and capital costs, which may result from the loss of such flexibility'' (78 FR 15648). Such flexibility is relevant to the beef and pork industries in the United States. Both feeder and slaughter cattle and hogs are imported from Canada, while mainly feeder cattle are imported from Mexico.

As noted by several commenters, commingling may allow some packers with reliable access to U.S. and foreign-origin livestock to produce products with a single country of origin label, such as ''Product of the U.S. and Canada'' or ''Product of the U.S. and Mexico.'' Several commenters stated that packers can currently take advantage of the commingling flexibility to label all of their production with the same COOL label information every day, even if the animals processed each day are of different origins, so long as the packers can ensure that they process animals of the declared mix of origins every production day. The commenters stated that, in those cases, there may be no need for segregation, sorting, additional labels, and other processes that would otherwise be required to provide COOL information.

In the case of lamb, chicken, and goat meat, imports of live animals for feeding and slaughter in the United States are inconsequential for purposes of this regulatory impact analysis, due to being of negligible quantities.[4] Thus, the following discussion addresses the potential impacts of the loss of commingling flexibility on the beef and pork sectors only.

Commenters to the notice of proposed rulemaking submitted anecdotal information that confirmed that commingling flexibility is used by some packers. However, the information submitted was not sufficient to allow the Agency to determine the extent to which industry is making use of commingling flexibility. Therefore, to develop a range of estimates of the extent to which the beef and pork subsectors may potentially use commingling flexibility under the current COOL regulations (Table 1), the Agency made various assumptions and used several sources of data to examine the cost implications of ending the commingling activity that might be occurring in the industry.

TABLE 1—RANGE OF ESTIMATED POTENTIAL CURRENT USE OF COMMINGLING FLEXIBILITY

Segment	Lower (percent)	Midpoint (percent)	Upper (percent)
Beef	5	12.5	20
Pork	5	12.5	20

The lower-bound estimate is derived from the position of certain U.S. industry actors as well as the complainants in the WTO dispute that the proportion of beef and pork that carries the U.S.-origin label is close to 90 percent.[5] Given that imported livestock represent about eight percent of fed steer and heifer slaughter and just over five percent of barrow and gilt slaughter in recent years, and assuming that some portion of these animals are segregated and labeled accordingly, the Agency adopts five percent as a plausible lower-bound estimate of the portion of total production that may be commingled.[6] For the upper bound of commingling, 20 percent is adopted for both beef and pork and is derived from mandatory COOL retail record reviews that were conducted in 2012. Although the sampling plan for retail compliance reviews is not constructed so as to allow generalization to the entire amount of beef and pork muscle cut covered commodities according to different label types, there are randomization procedures used to select the stores and items for record reviews. Thus, for purposes of establishing an upper bound on the current extent to which commingling flexibility may currently be used, the proportions of different label types found in the sample of retail record reviews provides a source of empirical evidence of the proportions that may be found in the population of retailers subject to the COOL requirements. Of 1,472 retail record reviews for beef and 1,652 for pork, 80 percent were of single-country origin and by definition, could not be the result of commingling. The remaining 20 percent of items reviewed had either two or more countries of origin or were unlabeled. At the most, then, 20 percent of the production could potentially be commingled, which implies the technically possible but highly unlikely assumption that every item with more than one country of origin plus all items without country of origin information are the result of commingling.

Given that the assumption underlying the higher end estimate is highly unlikely, the extent to which the industry is commingling likely falls closer to the lower end than the higher end of the estimated range of commingling.

[4] In 2012, over 8.4 billion broilers were produced in the United States (USDA, NASS. Poultry—Production and Value, 2012 Summary. April 2013.). However, only 4.2 million chickens other than breeding stock were imported into the United States (USDA FAS. GATS Global Agricultural Trade System Online. *http://www.fas.usda.gov/gats/Default.aspx*), constituting just 0.05 percent of U.S. broiler production. The FAS data also show that only 2,569 sheep and 316 goats were imported into the United States in 2012.)

[5] *See* Panel Reports, *United States—Certain Country of Origin Labelling (COOL) Requirements,* WT/DS384/R/WT/DS386/R, adopted 23 July 2012, paras. 7.361, 7.370.

[6] This lower bound estimate is consistent with estimates of U.S. industry in 2009 as well as the complaining parties in the WTO dispute. *See US—COOL (Panel),* para. 7.365.

The second step in estimating the impact of the elimination of commingling flexibility is to determine the cost of the change. A number of commenters provided information regarding the costs associated with the loss of the flexibility afforded by the current allowance of commingling multiple countries of origin on a production day. As noted by commenters, the loss of commingling flexibility means that muscle cut covered commodities of different production step origins will need to be separately labeled with their specific production step information to make the information available to retailers. Commenters pointed out a number of costs that would be incurred to accommodate this requirement. For instance, packers indicated that there would be decreased processing plant efficiency due to an increased number of changes from processing carcasses of one origin to another. For each change, commenters indicated that there is downtime of processing plant labor and capital that runs from $750 to $900 per minute in large beef and pork processing facilities. Commenters also indicated that there would be additional stock keeping units (SKUs) to distinguish differently labeled products, and that the additional SKUs would require reconfiguration of slaughter and processing facilities to segregate animals in pens and products in coolers. Retailers likewise indicated that there would be additional costs associated with an increase in the potential number of origins due to the loss of commingling flexibility at the processor level and the requirement to provide information on the country of birth, raising, and slaughter.

As noted by several commenters, the mandatory COOL proposed rule published in October 2003, did not provide for commingling of muscle cut covered commodities (68 FR 61944). Thus, the regulatory impact analysis (hereafter, 2003 RIA (68 FR 61952)) accounted for the fact that animals and products would need to be segregated to enable labeling of muscle cut covered commodities by country of origin. Among other changes from the 2003 proposed rule, the mandatory COOL final rule published in January 2009, provided that muscle cut covered commodities could be commingled in a single production day.[7] Thus, the regulatory impact analysis (hereafter, 2009 RIA (74 FR 2682)) accounted for the expectation that some degree of commingling according to these two provisions would occur, with the resultant costs estimated to be lower than would be the case without the flexibility of commingling.

Despite receiving anecdotal evidence from commenters on costs of specific activities associated with adjustment to the loss of commingling flexibility, the information was not suitable for compiling into industry-wide total cost estimates. However, with appropriate adjustments, comparing estimated costs from the 2003 RIA (no commingling) to the estimated costs from the 2009 RIA (commingling allowed) provides a basis for estimating the portion of the adjustment costs of this final rule that arise from the disallowance of commingling. The 2003 RIA presented lower-range and upper-range estimates of implementation costs for affected producer, intermediary, and retailer segments. The upper-range estimates were derived from available studies, comments on guidelines for interim voluntary COOL (67 FR 63367), and institutional knowledge of the industries subject to the proposed rule. The 2003 proposed rule did not allow for commingling of covered beef, pork, and lamb muscle cut covered commodities.

The 2009 RIA presented estimates of implementation costs for the requirements of the COOL final rule. In deriving cost estimates for the 2009 RIA, the underlying assumptions were adjusted to reflect changes in the requirements from the proposed rule to the final rule. Most importantly for purposes of deriving cost estimates for muscle cut covered commodities, the 2009 RIA assumed that commingling on a production day would be permitted. Thus, per-unit incremental implementation costs were lowered from the upper-range estimates presented in the 2003 RIA. As a result, differences between the 2003 RIA estimates and the 2009 RIA estimates mainly represent expected marginal cost impacts of the loss of commingling flexibility (Table 2).

TABLE 2—ESTIMATED IMPLEMENTATION COSTS PER AFFECTED INDUSTRY SEGMENT ADJUSTED TO 2012 DOLLARS

Segment	Beef			Pork		
	2003 RIA	2009 RIA	Difference	2003 RIA	2009 RIA	Difference
Intermediary ($/head)	20.00	12.84	7.16	5.00	3.21	1.79
Retailer ($/pound)	0.125	0.075	0.050	0.088	0.043	0.045

In the 2003 RIA, upper-range implementation costs for intermediaries (primarily packers and processors) in the beef segment were estimated at $0.02 per pound of carcass weight. Assuming an 800 pound average carcass weight for steers and heifers, the cost per pound estimate translates into $16.00 per head, or $20 per head after adjusting to 2012 dollars using a Consumer Price Index (CPI) inflation factor of 1.25 (see Table 2). In the 2009 RIA, the implementation cost for beef segment intermediaries was estimated at $0.015 per pound or $12.00 per head, which was considered a best estimate. Adjusting to 2012 dollars using a CPI inflation factor of 1.07 results in an estimate of $12.84 per head. Consequently, in 2012 dollars, the difference between the 2003 RIA estimate and the 2009 RIA estimate for beef segment intermediaries is $7.16 per head, which represents potential adjustment costs due to the loss of commingling flexibilities. Similar calculations apply at the retail level for the beef segment, where the upper-range of costs were estimated at $0.10 per pound in the 2003 RIA and a best estimate of $0.07 per pound in the 2009 RIA. The resulting difference in retailer costs for the beef segment is $0.050 per

[7] As discussed in the 2009 final rule, USDA considers that commingling typically takes place in two different scenarios. First, muscle cut covered commodities derived from animals born, raised, and slaughtered in the United States that are commingled during a production day with muscle cut covered commodities derived from animals that were raised and slaughtered in the United States, and were not derived from animals imported for immediate slaughter, could be designated as, for example, Product of the United States, Country X, and (as applicable) Country Y. Second, muscle cut covered commodities derived from animals that are born in Country X or Country Y, raised and slaughtered in the United States, that are commingled during a production day with muscle cut covered commodities that are derived from animals that are imported into the United States for immediate slaughter, could be designated as Product of the United States, Country X, and (as applicable) Country Y.

pound in 2012 dollars, which represents adjustment costs to affected retailers that no longer can market commingled meat cuts.

The same procedures that were applied to the beef segment were applied to the pork segment to arrive at estimated marginal impacts of the loss of commingling flexibility, also shown in Table 2. The relevant figures are $0.02 per pound for pork segment intermediaries in the 2003 RIA, which converts to $4.00 per head assuming an average 200 pound carcass weight for barrows and gilts. In the 2009 RIA, the intermediary estimate was $0.015 per pound or $3.00 per head. Adjusted to 2012 dollars, the difference between the 2003 RIA and 2009 RIA cost estimates for intermediaries in the pork segment is $1.79 per head. At the retail level in the pork segment, costs were estimated at $0.07 per pound in the 2003 RIA and $0.04 per pound in the 2009 RIA. The difference translates to $0.045 per pound adjusted to 2012 dollars.

The final step in estimating the potential costs of the loss of commingling flexibility is to apply the estimated costs per unit to the relevant measure of production. At the intermediary level for the beef segment, the starting point begins with estimated slaughter of 33.0 million head of cattle in 2012.[8] Given that steers and heifers made up 78.4 percent of total Federally inspected cattle slaughter,[9] total commercial slaughter of steers and heifers is estimated at 25.8 million head. Only steer and heifer slaughter is examined, as the amended labeling requirements only apply to muscle cuts (e.g., steaks and roasts). While a small amount of muscle cuts of cows are marketed at retail, most beef derived from cows (and bulls) is used for grinding or other further processed items. Muscle cuts from cows typically are marketed through hotel, restaurant, or institutional channels or are further processed such that COOL requirements no longer apply.

The total number of head of steers and heifers is then multiplied by the lower, midpoint, and upper ranges of potentially affected animals (or five, 12.5, and 20 percent from above) to arrive at the range of potential adjustment costs shown in Table 3. Specifically, the estimated number of commingled steers and heifers is 1.3 million head at the lower bound, 3.2 million head at the midpoint, and 5.2 million head at the upper bound. Note that within each scenario, different mixes of U.S.-origin cattle versus foreign-origin cattle are possible and the actual mix is undetermined.

TABLE 3—ESTIMATED AFFECTED QUANTITIES AND COSTS OF THE LOSS OF COMMINGLING FLEXIBILITY BY INDUSTRY SEGMENT

[In millions]

	Lower bound		Midpoint		Upper bound	
	Beef	Pork	Beef	Pork	Beef	Pork
Intermediary						
Head	1.3	5.5	3.2	13.7	5.2	22.0
Segment Cost	$9.2	$9.8	$23.1	$24.6	$37.0	$39.3
Retailer						
Pounds	237.6	116.5	594.0	291.3	950.4	570.2
Segment Cost	$11.9	$5.2	$29.7	$13.1	$47.5	$21.0
Total Cost	$21.1	$15.0	$52.8	$37.7	$84.5	$60.3

Multiplying the number of head in Table 3 by the estimated cost per head of $7.16 shown in Table 2 yields beef segment intermediary costs of $9.2 million, $23.1 million, and $37.0 million at the lower, midpoint, and upper levels. These are industry-wide total costs that are expected to be borne primarily by beef packers and processors that currently commingle domestic and foreign-origin cattle under a single COOL declaration. Those costs represent activities such as segregation, sorting, breaks or changes in processing lines from one COOL category to another, additional labels, and other activities above and beyond those required for compliance with current COOL regulations.

Costs of the loss of commingling flexibility for pork segment intermediaries are calculated in a similar manner to that used for the beef segment. In 2012, U.S. commercial hog slaughter was 113.0 million head. Of Federally inspected slaughter, 97.0 percent was barrows and gilts, resulting in an estimated commercial slaughter of 109.8 million barrows and gilts. Meat derived from sows and boars is used for further processed products and is not marketed as muscle cuts that would be subject to COOL requirements. Table 3 shows the estimated number of commingled barrows and gilts to be 5.5, 13.7, and 22.0 million head at the lower, midpoint, and upper levels. After multiplying by the per-head cost estimate of $1.79, expected costs due to the loss of commingling flexibility for pork muscle cut covered commodities at the intermediary level are estimated to be $9.8 million at the lower bound, $24.6 million at the midpoint, and $39.3 million at the upper bound.

The anticipated cost at the retail level due to the loss of commingling flexibility can be computed in a manner similar to that applied at the intermediary level. Adjustment costs for retailers currently marketing commingled beef and pork muscle cut covered commodities stem from activities that may be associated with switching from handling a stream of commingled products carrying the same COOL information to dealing with products that may carry two or more distinct origin labels due to the disallowance of commingling flexibility and the requirement for more specific information on the place of birth, raising, and slaughter. As at the intermediary level, retailers may incur additional costs for segregation, breaks or changes in retail scale weighing and printing from one COOL category to another, additional labels, and other activities above and beyond those required for compliance with current COOL regulations.

Estimating the quantity of beef and pork products that may be commingled at the retail level differs from the process applied at the intermediary

[8] USDA National Agricultural Statistics Service. Livestock Slaughter. January 2013. *http://usda01.library.cornell.edu/usda/nass/LiveSlau//2010s/2013/LiveSlau-01-24-2013.pdf.*

[9] *Ibid.*

level. At the intermediary (packer/processor) level, conveying COOL information begins with entire animals and subsequently carcasses. Thus, the marginal costs of the loss of commingling flexibility are estimated on a per-head basis. In the case of retailers, however, only those muscle cut covered commodities subject to COOL requirements may potentially be affected by the loss of commingling flexibility. For both beef and pork, estimated retail quantities begin with the estimated quantities shown in Table 2 of the 2009 RIA. The retail quantities from the 2009 RIA—8.2 million pounds of beef and 2.3 million pounds of pork—reflect the volume of product estimated to be subject to COOL requirements at retailers subject to the regulations. Further, the retail quantities are adjusted to account for processed products that are exempt from COOL requirements, such as marinated beef tenderloin or cooked ham. The retail quantities are then further adjusted to estimate the quantity of muscle cut covered commodities. For beef, 58 percent of the retail weight is estimated to be sold as cuts,[10] and then the factors of five, 12.5, and 20 percent are applied to arrive at the lower, midpoint, and upper estimates shown in Table 3. For pork, no further adjustment is applied to the retail weight, but the factors of five, 12.5, and 20 percent are applied to arrive at the lower, midpoint, and upper estimates.

The retail quantity estimates for beef and pork are multiplied by the respective per-pound cost estimates of $0.050 and $0.045 to calculate the anticipated cost to retailers for the loss of commingling flexibility. Summing the intermediary and retailer costs yields the total cost estimates shown in the bottom row of Table 3. The total estimated costs for the loss of commingling flexibility range from $15.0 million at the lower end for pork to $84.5 million at the upper end for beef.

Total costs for adjustment to this rule are estimated as the sum of costs for label changes and costs associated with the elimination of the provision that allows for commingling. While some comments suggested that costs of changing labels would be higher than estimated in the regulatory impact analysis for the proposed rule, others suggested that costs of changing labels would be within the range estimated in the proposed rule.

As discussed previously, the 2009 COOL regulations allow for a variety of ways that origin information can be provided, such as placards, signs, labels, stickers, etc. Many retail establishments have chosen to use signage above the relevant sections of the meat case to provide the required origin information in lieu of or in addition to providing the information on labels on each package of meat. Under this final rule, the Agency will continue to allow the COOL notification requirements to be met, including the requirement to provide the location where the production steps occurred, by using signs or placards. For example, for meat derived from cattle born in Canada and raised and slaughtered in the United States, the signage could read ''Beef is from animals born in Canada, Raised and Slaughtered in the United States.'' Further, the Agency recognizes that for some period of time following the period of education and outreach, existing label and package inventories will include less specific origin information (e.g., Product of Country X and the U.S.) As long as retail establishments provide the more specific information via other means (e.g., signage), the Agency will consider the origin notification requirements to have been met. This ability to use in-store signage is expected to reduce transition costs from the current COOL requirements to the more specific information required by this rule.

With respect to changing current COOL label information, in the initial regulatory impact analysis, cost estimates provided in a March 2011, Food and Drug Administration (FDA) report [11] were used to estimate the cost of adding the production step information to currently required COOL labels for muscle cut covered commodities.

Under the FDA model, one-time costs for a coordinated label change are assumed to involve only administrative labor costs and recordkeeping. However, as discussed in the regulatory impact analysis for the proposed rule, no additional recordkeeping costs are anticipated from this rule. Assuming an upper bound estimate of 121,350 unique labels, the Agency estimated the midpoint cost at $32.8 million with a range of $17.0 to $47.3 million in the proposed rule.

Table 4 shows the total estimated adjustment costs for the amendments to the labeling requirements for muscle cut covered commodities. The estimates are presented as a matrix spanning the range of estimated costs of modifying existing labels cross-tabulated with the range of estimated costs resulting from the loss of the flexibility to commingle more than one specific birth, raising, and slaughter origin. The total adjustment costs calculated by adding the labeling costs at the lower, midpoint, and upper range ($17.0, $32.8, and $47.3 million, respectively) to the commingling costs at the lower, midpoint, and upper range ($36.1, $90.5, and $144.8 million, respectively).

TABLE 4—ESTIMATES OF ADJUSTMENT COSTS

[Million dollars]

Label cost		Loss of commingling flexibility		
		Lower 36.1	Midpoint 90.5	Upper 144.8
Lower	17.0	53.1	107.5	161.8
Midpoint	32.8	68.9	123.3	177.6
Upper	47.3	83.4	137.8	192.1

Total costs are estimated to range from $53.1 million at the low end to $192.1 million at the high end.

Comparatively, implementation costs for intermediaries and retailers for beef, pork, lamb, goat, and chicken covered commodities for the current COOL requirements were estimated to total $1,334.0 million in the 2009 RIA, or

[10] *http://www.beefusa.org/CMDocs/BeefUSA/Resources/Statistics/averageannualpercapitaconsumptionbeefcutsandgroundbeef559.pdf.*

[11] Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011 (Contract No. GS–10F–0097L, Task Order 5).

$1,427.4 million in 2012 dollars. Adjustment costs for the amendments to the current labeling requirements for these commodities are thus estimated at 3.7 to 13.5 percent of the initial COOL adjustment costs for intermediaries and retailers.

The likely range of adjustment costs can be narrowed to some extent from the wide range shown Table 4. In terms of commingling flexibility, the true, but unknown, percentages of beef and pork muscle cut covered commodities that are currently produced and marketed through retailers subject to COOL requirements are unlikely to be at the upper range of estimates. The upper range estimates imply that one in five beef and pork muscle cut items are commingled. While technically possible, that is unlikely, because it requires the assumption that every item in the COOL record review in 2012 having more than one country of origin plus all items without country of origin information would have been the result of commingling. This assumption is unrealistic and not consistent with numerous comments received on the proposed rule as well as comments of industry on the effect that the 2009 final rule has had on the industry.[12] Considering only the lower to midpoint estimates for commingling narrows the estimated adjustment costs to a range of $53.1 to $137.8 million.

Furthermore, over time those costs are expected to fall as packing facilities develop procurement arrangements that are tailored to the loss of commingling. Similarly, retailers' additional labeling costs and adjustment costs for separately providing information on different origin products will diminish over time. Thus, initial adjustment costs are expected to fall over time.

The greater the extent to which individual packers, processors, and retailers use commingling flexibility, the higher is the expected cost of adjustment due to the loss of that flexibility. Packers and processors located nearer to sources of imported cattle and hogs may be commingling to a greater extent than others.

Regulatory Flexibility Analysis

This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The purpose of the RFA is to consider the economic impact of a 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. The Agency believes that this rule will have a relatively small economic impact on a substantial number of small entities. As such, the Agency has prepared the following regulatory flexibility analysis of the rule's likely economic impact on small businesses pursuant to section 603 of the RFA. Section 604 of the RFA requires the Agency to provide a summary of the significant issues raised by public comments in response to the initial regulatory flexibility analysis. The Comments and Responses section includes the comments received on the initial RFA and provides the Agency's responses to the comments.

As mentioned in the summary above, this rulemaking was contemplated after the Agency reviewed the overall regulatory program in light of the WTO's finding that the current COOL requirements are inconsistent with U.S. WTO obligations. The objective of this rulemaking is to amend current mandatory COOL requirements to provide consumers with information on the country in which productions steps occurred for muscle cut covered commodities, thus fulfilling the program's objective of providing consumers with information on origin in a manner consistent with the COOL statute and U.S. international trade obligations. The legal basis for the mandatory COOL regulations is Subtitle D of the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1638, et seq.).

Under preexisting Federal laws and regulations, origin designations for muscle cut covered commodities need not specify the production steps of birth, raising, and slaughter of the animals from which the cuts are derived. Thus, the Agency has not identified any Federal rules that would duplicate or overlap with this rule.

We do not anticipate that additional recordkeeping will be required or that new systems will need to be developed to transfer information from one level of the production and marketing channel to the next. However, information available to consumers at retail will need to be augmented to include information on the location in which the three major production steps occurred. Therefore, the companies most likely to be affected are packers and processors that produce muscle cut covered commodities and retailers that sell them.

There are two measures used by the Small Business Administration (SBA) to identify businesses as small: Sales receipts or number of employees.[13] In terms of sales, SBA classifies as small those grocery stores with less than $30 million in annual sales (13 CFR 121.201). Warehouse clubs and superstores with less than $30 million in annual sales are also defined as small. SBA defines as small those manufacturing firms with less than 500 employees and wholesalers with less than 100 employees.

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 75.6 percent of all food consumed at home.[14] Therefore, the number of these stores provides an indicator of the number of entities potentially affected by this rule. The 2007 Economic Census [15] shows there were 4,335 supermarkets and grocery stores (not including convenience stores), warehouse clubs, and superstore firms operated for the entire year with annual sales exceeding $5,000,000 (Table 5). We assume that stores with overall sales above this threshold would be most likely to be subject to the PACA and therefore subject to mandatory COOL and the proposed amendments. We recognize that there may be retail firms, particularly smaller retail firms, subject to PACA but that do not actually hold a PACA license. Therefore, a lower annual sales threshold may be appropriate for estimating the number of retailers subject to PACA. However, the $5,000,000 threshold provides estimated firm and establishment numbers that are generally consistent with the PACA database listing licensed retailers.

[12] *See US—COOL (Panel),* paras. 7.361–7.365.

[13] Small Business Administration. *http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdfhttp://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf.*

[14] ERS, USDA. Food CPI, Prices and Expenditures: Sales of Food at Home by Type of Outlet. *http://www.ers.usda.gov/Briefing/CPIFoodAndExpenditures/Data/table16.htmhttp://www.ers.usda.gov/Briefing/CPIFoodAndExpenditures/Data/table16.htm.*

[15] U.S. Census Bureau. 2007 Economic Census. Retail Trade Subject Series. Establishment and Firm Size. EC0744SSSZ4 and EC0744SSSZ1. Issued January 2013.

TABLE 5—ESTIMATED NUMBER OF AFFECTED ENTITIES, SHARE OF FIRMS BY SIZE, AND COST OF RULE REVISION

NAICS code	NAICS description	Enterprise size criteria	Number of firms	Number of establishments	Share of firms by size %	Cost of rule revision
311611	Animal (except Poultry) Slaughtering.	<500 Employees	1,504	1,518	97.6	$5,165,754
		500+ Employees	37	115	2.4	27,874,505
		Total	1,541	1,633		33,040,259
311612	Meat Processed from Carcasses.	<500 Employees	1,203	1,232	94.9	6,745,200
		500+ Employees	64	173	5.1	10,902,633
		Total	1,267	1,405		17,647,833
311615	Chicken Processing	<500 Employees	2	N/A	5.3	N/A
		500+ Employees	36	N/A	94.7	N/A
		Total	38	156		153,504
445110	Supermarkets and Other Grocery (except Convenience) Stores, Sales >$5,000,000.	<$50,000,000 Sales	4,106	6,050	95.0	14,536,907
		$50,000,000+ Sales	217	19,846	5.0	47,685,862
		Total	4,323	25,896		62,222,770
452910	Warehouse Clubs and Supercenters.	<$50,000,000 Sales	0	0	0.0	
		$50,000,000+ Sales	12	4,260	100.0	10,235,905
		Total	12	4,260		10,235,905
Grand Total			7,181	33,350		123,300,000

Numbers may not sum due to rounding.
SOURCE: 2007 County Business Patterns and 2007 Economic Census.

The 2007 Economic Census data provide information on the number of food store firms by sales categories. Of the 4,335 food store, warehouse club, and superstore firms with annual sales of at least $5,000,000, an estimated 4,106 firms had annual sales of less than $50,000,000, which is higher than the threshold for the SBA definition of a small firm. The Economic Census data do not provide a breakout at the $30,000,000 SBA threshold, which means that the estimated number of small businesses likely is an overestimate.

We estimate that 33,350 establishments owned by 7,181 firms will be either directly or indirectly affected by this rule (Table 5). Of these establishments/firms, we estimate that 6,849 qualify as small businesses. The midpoint total direct incremental costs are estimated for the rule at approximately $123.3 million with a range of $53.1 million to $192.1 million. The direct incremental costs of the rule are the result of revisions in labeling of muscle cut covered commodities. At the total estimated midpoint cost of $123.3 million, $26.4 million would be estimated to be costs borne by small businesses based on the calculations explained below. As also explained below, implementation costs are not expected to be the same for all establishments.

The average cost for each retail establishment is calculated assuming an average label cost per establishment of approximately $984 plus and an average cost for loss of commingling of approximately $1,419 for a total of $2,403. The average label cost for retailer as well as packer and processor establishments is the total midpoint label cost of $32.8 million divided by the total of 33,350 establishments. The average cost per retail establishment for the loss of commingling is the total midpoint cost of $42.8 million for all retailers divided by 30,156 retail establishments. Assuming the same average implementation cost of approximately $2,403 for all retail establishments, small retailers' portion of these costs would be estimated at approximately $14.5 million. However, small retail establishments are expected to incur substantially lower implementation costs due to lower volumes and varieties of muscle cut covered commodities typically marketed at such operations.

Any manufacturer that supplies retailers or wholesalers with a muscle cut covered commodity will be required to provide revised country of origin information to retailers so that the information can be accurately supplied to consumers. Of the manufacturers potentially affected by the rule, SBA defines those having less than 500 employees as small.

The 2007 Economic Census [16] provides information on manufacturers by employment size. For livestock processing and slaughtering there is a total of 2,808 firms (Table 5). Of these, 2,707 firms have less than 500 employees. This suggests that 96 percent of livestock processing and slaughtering operations would be considered as small firms using the SBA definition. For chicken processing there are a total of 38 firms, only two of which are classified as small. Thus, only five percent of the chicken processors are small businesses.

As with retailers above, the average cost for each packer/processor establishment is calculated assuming an average label cost per establishment of approximately $984 plus and an average cost for loss of commingling. The average label cost for packer and processor establishments is calculated as previously explained for retail establishments. However, the average cost per packer/processor establishment for the loss of commingling is calculated using additional information that relates to the size of establishments. Estimated receipts from the 2007 Economic Census are used as a proxy for the relative throughput of livestock slaughtering and meat processing establishments. For instance, small livestock slaughtering enterprises had 7.7 percent of total receipts of $104.7 billion for animal slaughtering (NAICS code 311611) and meat processing (NAICS code 311612) combined. Large livestock slaughtering enterprises had 58.2 percent of the combined receipts, while shares were 11.6 percent for small meat processors and 22.5 percent for large meat processors. These percentages are then applied to the total midpoint cost of $47.7 million for the loss of commingling for all packers and processors. The resulting values are then divided by the number of establishments to estimate the cost per establishment resulting from the loss of commingling flexibility. For livestock slaughtering, the estimated costs are $2,420 for small establishments and

[16] U.S. Census Bureau. 2007 Economic Census. Historical Data Tabulations by Enterprise Size. 2007 Annual Tabulations: U.S., All Industries. *http://www.census.gov/econ/susb/data/susb2007.html.*

$241,403 for large establishments. For meat processing, the estimated costs are $4,491 for small establishments and $62,038 for large establishments. Adding in the average estimated label cost of $984 yields total estimated costs of $3,403 per small livestock slaughtering establishment and $242,387 per large establishment. Similarly, the total estimated costs are $5,475 per small meat processing establishment and $63,021 per large establishment. Based on these average estimated implementation costs, small packer and processor costs under the rule are estimated at about $11.9 million. However, the cost of the loss of commingling flexibility is expected to be mostly concentrated among those facilities that currently commingle domestic and foreign-origin cattle or hogs. The number of small slaughtering and processing establishments that currently commingle is expected to be considerably fewer than the total number of small establishments.

Alternatives considered: Section 603 of the RFA requires the Agency to describe the steps taken to minimize any significant economic impact on small entities including a discussion of alternatives considered. The law explicitly identifies those retailers required to provide their customers with country of origin information for covered commodities (namely, retailers subject to PACA). Thus, the amendments are consistent with the requirements of the Act in terms of who is subject to the final rule.

The change in the definition of a retailer will not have a substantial effect on the number of retailers subject to COOL requirements. The PACA program continually monitors the retail industry for firms that may meet the threshold for PACA licensing and seeks to enforce compliance with those requirements. Thus, those retailers that are required to hold a PACA license should, in fact, be licensed separate and apart from any COOL program requirements.

The Agency considered other alternatives including taking no action or providing less information than was required under the 2009 COOL regulations. These alternatives would not achieve the purpose of this action.

As with the current mandatory COOL program, this final rule contains no requirements for firms to report to USDA. Compliance audits will be conducted at firms' places of business. There are no recordkeeping requirements beyond those currently in place, and the Agency believes that the information necessary to transmit production step information largely is already in place within the affected industries.

As stated in the RFA of the COOL final rule published in January 2009 (74 FR 2693), the COOL program provides the maximum flexibility practicable to enable small entities to minimize the costs on their operations. While the allowance for commingling has been removed from this final rule, the Agency is providing other labeling flexibilities.

The 2009 COOL regulations allowed for a variety of ways that the origin information can be provided, such as placards, signs, labels, stickers, etc. Many retail establishments have chosen to use signage above the relevant sections of the meat case to provide the required origin information in lieu of or in addition to providing the information on labels on each package of meat. Under this final rule, the Agency will continue to allow the COOL notification requirements to be met, including the requirement to provide the location where the production steps occurred, by using signs or placards. For example, for meat derived from cattle born in Canada and raised and slaughtered in the U.S., the signage could read ''Beef is from animals born in Canada, Raised and Harvested in the U.S.'' Further, the Agency recognizes that for some period of time following the period of education and outreach, existing label and package inventories will include less specific origin information (e.g., Product of Country X and the U.S.) As long as retail establishments provide the more specific information via other means (e.g., signage), the Agency will consider the origin notification requirements to have been met.

In addition, small packers, processors, and retailers are expected to produce and stock a smaller number of unique muscle cut covered commodities compared to large operations. Thus, adjustment costs for small establishments likely will be substantially lower than the estimated midpoint average of approximately $3,700 assuming the same average cost for all establishments regardless of type or size.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C 3501–3520) the information collection provisions contained in this collection package are currently approved by OMB under Control Number 0581–0250. On December 4, 2012, AMS published a notice and request for comment seeking OMB approval to renew and revise this information collection. The comment period closed on February 4, 2013. This final rule does not change any of the recordkeeping provisions.

Executive Order 12988

The contents of this rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted from creating or operating country of origin labeling programs for the commodities specified in the Act and these regulations. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS considered the potential civil rights implications of this rule on protected groups to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to these regulations. This rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. This program is required by the

2002 Farm Bill, as amended by the 2008 Farm Bill.

In the January 15, 2009, final rule, the Federalism analysis stated that to the extent that State country of origin labeling programs encompass commodities that are not governed by the COOL program, the States may continue to operate them. It also contained a preemption for those State country of origin labeling programs that encompass commodities that are governed by the COOL program. This final rule does not change the preemption. With regard to consultation with States, as directed by the Executive Order 13132, AMS previously consulted with the States that have country of origin labeling programs. AMS has cooperative agreements with all 50 States to assist in the enforcement of the COOL program and has communications with the States on a regular basis.

It is found and determined that good cause exists for implementing this final rule May 23, 2013. This rule has been determined to be a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 et seq.); however, the Agency finds that under 5 U.S.C. 808(2) good cause exists to waive the 60-day delay in the effective date for two reasons. First, and as discussed above, on July 23, 2012, the DSB adopted its recommendations and rulings, finding certain COOL requirements to be inconsistent with U.S. WTO obligations. A WTO arbitrator determined that the reasonable period of time for the United States to comply with the DSB recommendations and rulings is ten months, meaning that the United States must comply with the recommendations and rulings by May 23, 2013. If the United States does not bring the rule into effect by this date, the complaining parties in the WTO dispute, Canada and Mexico, may seek to exercise their rights to suspend application to the United States of WTO concessions or other obligations equivalent to the trade benefits they have lost as a result of the inconsistent COOL requirements. If so authorized, Canada and Mexico could take action that adversely affects U.S. interests (e.g., increasing tariffs on U.S. goods). Second, and as also discussed above, changes to the labeling provisions for muscle cut covered commodities, which will provide consumers with more specific information with regard to muscle cut covered commodities, and the other modifications to the regulations will enhance the overall operation of the program. For these same reasons, pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. Accordingly, this rule will be effective May 23, 2013.

List of Subjects

7 CFR Part 60

Agricultural commodities, Fish, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 65

Agricultural commodities, Food labeling, Meat and meat products, Macadamia nuts, Peanuts, Pecans, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 60 and 65 are amended as follows:

PART 60—COUNTRY OF ORIGIN LABELING FOR FISH AND SHELLFISH

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

■ 2. Section 60.124 is revised to read as follows:

§ 60.124 Retailer.

Retailer means any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

PART 65—COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, CHICKEN, GOAT MEAT, PERISHABLE AGRICULTURAL COMMODITIES, MACADAMIA NUTS, PECANS, PEANUTS, AND GINSENG

■ 3. The authority citation for part 65 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

■ 4. Section 65.240 is revised to read as follows:

§ 65.240 Retailer.

Retailer means any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

■ 5. Section 65.300 paragraphs (d), (e), and (f) are revised to read as follows:

§ 65.300 Country of origin notification.

* * * * *

(d) *Labeling Covered Commodities of United States Origin.* A covered commodity may bear a declaration that identifies the United States as the sole country of origin at retail only if it meets the definition of United States country of origin as defined in § 65.260. The United States country of origin designation for muscle cut covered commodities shall include all of the production steps (i.e., ''Born, Raised, and Slaughtered in the United States'').

(e) *Labeling Muscle Cut Covered Commodities of Multiple Countries of Origin from Animals Slaughtered in the United States.* If an animal was born and/or raised in Country X and/or (as applicable) Country Y, and slaughtered in the United States, the resulting muscle cut covered commodities shall be labeled to specifically identify the production steps occurring in each country (e.g., ''Born and Raised in Country X, Slaughtered in the United States''). If an animal is raised in the United States as well as another country (or multiple countries), the raising occurring in the other country (or countries) may be omitted from the origin designation except if the animal was imported for immediate slaughter as defined in § 65.180 or where by doing so the muscle cut covered commodity would be designated as having a United States country of origin (e.g., ''Born in Country X, Raised and Slaughtered in the United States'' in lieu of ''Born and Raised in Country X, Raised in Country Y, Raised and Slaughtered in the United States'').

(f) *Labeling Imported Covered Commodities.* (1) Perishable agricultural commodities, peanuts, pecans, ginseng, macadamia nuts and ground meat covered commodities that have been produced in another country shall retain their origin, as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale.

(2) Muscle cut covered commodities derived from an animal that was slaughtered in another country shall retain their origin, as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale (e.g., ''Product of Country X''), including muscle cut covered commodities derived from an animal that was born and/or raised in the United States and slaughtered in another country. In addition, the origin declaration may include more specific location information related to production steps (i.e., born, raised, and slaughtered) provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

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Dated: May 20, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–12366 Filed 5–23–13; 8:45 am]

BILLING CODE 3410–02–P