



Mandatory

Country of Origin Labeling

Of

Fish and Shellfish

Handbook

Updated March 30, 2005

Independent retailers and wholesalers should utilize this handbook to determine the information that they must require from their suppliers. Independent retailers and wholesalers should demand from their suppliers that all covered seafood commodities be individually pre-labeled with the country of origin and method of production information in a retail-ready format or ensure that the master shipping containers are labeled with such information as the recordkeeping burdens for pre-labeled products are less onerous.

BACKGROUND

On September 30, 2004, the U.S. Department of Agriculture (“USDA”) issued an interim final rule for mandatory country of origin labeling (“COL”) for fish and shellfish as required by the 2002 Farm Bill (P.L. 107-171).

Fish and shellfish covered under the interim final rule, (“covered commodities”) must be labeled at retail to indicate their country of origin with either “Product of U.S.” or the name of the foreign country of origin, and method of production (“MOP”) (wild and/or farm-raised), **effective April 4, 2005.** However, covered commodities are excluded from COL if they are an ingredient in a processed food item.

The USDA is conducting an education and outreach program for the six months following the effective date of the rule in which enforcement will be limited.

N.G.A. has prepared this summary based on the interim final rule in order to assist retailers and wholesalers in planning for compliance. **The provisions could be subject to change based on public comments filed.** N.G.A. has filed comments related to this rule. The comments may be viewed and downloaded at our website, <http://www.nationalgrocers.org>. On March 29, 2005, USDA released a Notice to the Trade which incorporated many significant aspects of our comments—particularly those related to the recordkeeping and tracking aspects of the interim final rule. The Notice to the Trade includes a clarification that **lot number tracking is not necessary** and also lessens the recordkeeping requirements. Both clarifications represent a significant improvement for N.G.A. members and the entire grocery industry. Please contact N.G.A.’s Director of Government Affairs, Erik Lieberman at (703)-516-0700 or elieberman@nationalgrocers.org if you have any questions related to this rule.

While the effective date of the interim final rule is April 4, 2005, **the USDA will be conducting an outreach and education program for the six months subsequent to the effective date.** **The focus during this program will be on informing retailers and wholesalers on how to comply with the interim final rule rather than on enforcement.** The requirements of this rule do not apply to frozen fish or shellfish caught or harvested before December 6, 2004, although after October 6, 2005, if the origin and/or method of production information is not known, the supplier of frozen fish

or shellfish caught or harvested before December 6, 2004, must possess records to substantiate the date of harvest or capture of fish or shellfish.

The N.G.A. is actively engaged with the USDA as the agency continues working towards a final seafood rule and will keep you informed as to any developments relating to COL.

I. RETAILERS SUBJECT TO COL AND THOSE THAT ARE NOT

A. PACA LICENSED RETAILERS ARE SUBJECT TO COL

Retailers who need a Perishable Agricultural Commodities Act (PACA) license are subject to COL. A person selling at retail is subject to a PACA license once the invoice costs of fresh and frozen fruit and vegetable purchases exceed \$230,000 in a calendar year. In most cases this applies to N.G.A.'s supermarket and grocery store operators. Since fish markets and similar specialty shops do not generally sell fruits and vegetables, they do not meet the PACA definition of a retailer and therefore are not covered by the rule.

Although using the PACA benchmark in determining what retailers are subject to COL for seafood may seem counterintuitive as it is completely unrelated to seafood sales, PACA is the mechanism USDA has traditionally followed to regulate retailers' marketing practices.

B. FOOD SERVICE ESTABLISHMENTS ARE NOT SUBJECT TO COL

Food service establishments including in-store delis, salad bars or other food enterprises serving ready to eat products within a retail store are exempt. Restaurants, lunchrooms, cafeterias, food stands, bars, lounges and similar enterprises are also exempt from COL requirements.

The definition of food service establishment also includes salad bars, delis, and other food enterprises located within retail grocery establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises. This exemption is important to retailers who have prepared foods, salad bars and delis in their stores as covered commodities sold in a ready to eat form through an in-store salad bar or deli, would not have to carry a country of origin label.

II. LABELING REQUIREMENTS

A. PRODUCTS OF MIXED ORIGIN

For commingled retail food items comprised of the same covered commodity (e.g. a bag of frozen shrimp), having different origins, **the label must list all of the countries of origin.**

B. REMOTELY PURCHASED PRODUCTS

For sales of a covered commodity in which the customer purchases before having the opportunity to see the final package (*i.e.*, internet sales, home delivery sales) the retailer may provide the country of origin and method of production information (wild and/or farm-raised), beforehand (*i.e.*, in product description on web page) or at the time the product is delivered to the consumer.

C. MARKINGS

1. Form and placement

The following declarations must be conspicuous and allow consumers to determine the countries of origin and methods of production when making their purchases and comply with existing federal labeling requirements. For example, under FDA labeling regulations (21 C.F.R. 101.2), it is not permissible to include the method of production designation in either the ingredient statement or as part of the common or usual name of the product.

A white sign board behind a seafood counter with the COL and MOP information written on it would be considered conspicuous. The USDA will apply a reasonable person standard—whether or not a reasonable person could discern the COL and MOP information from the label or display.

Acceptable forms and places of designating the country of origin as cited by the rule are:

<u>Form</u>	<u>Placed On</u>
Label	Package
Stamp	Display
Mark	Holding unit
Placard	Bin containing the commodity at the final point of sale to consumers
Band	
Twist tie	<i>Bulk containers containing covered commodities from multiple countries of origin and/or methods of production must list all possible origins and methods of production.</i>
Pin tag	
Other clear and visible sign	
<i>Text may be typed, printed or handwritten</i>	

2. Country designations

Abbreviations and variant spellings that unmistakably indicate the country of origin such as “U.K.” are acceptable. The adjectival form of the name of a country is acceptable so long as the form of the name does not appear with other words so as to refer to a kind or species of product (e.g. Spanish mackerel, Chilean sea bass). Symbols or flags alone may not be used to designate country of origin.

3. Production designations

The following method of production definitions have been cited by the USDA as acceptable and unacceptable:

Acceptable Forms	Unacceptable Forms
“wild caught” “wild” “farm-raised” “farmed” or a combination of these terms for blended products	“ocean caught” “caught at sea” “line caught” “cultivated” “cultured”

The method of production designation may be in the form of a check box.

The country of origin declaration and method of production may be combined or made separately.

III. COUNTRY OF ORIGIN DESIGNATION REQUIREMENTS

A. REGULATIONS FOR DOMESTIC SEAFOOD

Farm-raised and wild caught seafood that fits under the following requirements must bear a “United States country of origin” declaration:

<u>Farm-Raised</u>	<u>Wild</u>
Fish or shellfish hatched, raised, harvested, and processed in the United States (includes U.S. waters) and that has not undergone a substantial transformation outside of the United States must bear a “United States country of origin” label.	Fish or shellfish harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel, and that has not undergone a substantial transformation outside of the United States must bear a “United States country of origin” label.
<u>Examples</u>	<u>Examples</u>
1. Tilapia hatched and raised in ponds in California and filleted and frozen in	1. Grouper caught in U.S. waters by a Honduran flagged vessel and filleted in the

California.	United States.
2. Tilapia hatched and raised in ponds in Texas and filleted and frozen in Arizona.	2. Bluefin tuna caught in international waters by a U.S. flagged vessel and filleted in the United States.
3. Salmon hatched in Maine and raised in U.S. waters, filleted and frozen in Maine.	3. Mahi Mahi caught in Bahamian waters and filleted in Bahamian waters aboard a U.S. flagged vessel.
4. Salmon hatched in Washington and raised in U.S. waters, filleted and frozen in Oregon.	
5. Mussels hatched in Maine and raised in U.S. waters, harvested in Maine.	

A substantial transformation has been categorized by the courts as transforming an item into a “new and different article of commerce” having a “new name, character or use.”

Labeling an item as “Product of Alaska,” “Alaskan Salmon” or “Product of Maine” does not constitute a United States country of origin declaration.

B. REGULATIONS FOR IMPORTED SEAFOOD

1. Fish and shellfish products that have been imported and substantially transformed in the United States or aboard a U.S. flagged vessel in international waters

For fish and shellfish products that have been imported and substantially transformed in the United States or aboard a U.S. flagged vessel, the rule mandates that the label shall read as follows:

<u>Wild Fish and Shellfish</u>	<u>Farm-Raised Fish and Shellfish</u>
“From [country X] processed in the United States”. Must also indicate product derived from wild fish or shellfish. (MOP)	“From [country X] processed in the United States”. Must also indicate product derived from farm-raised fish and shellfish. (MOP)

2. Fish and shellfish products that have been imported but not substantially transformed in the United States

In the case of imported fish and shellfish that have not been substantially transformed in the United States, the covered commodity retains its country of origin as declared to U.S. Customs and Border Protection at the time the product enters the United

States, through retail sale, provided it has not undergone a substantial transformation in the United States during that period.

Covered commodities imported in consumer-ready packages are currently required to bear a country of origin label on each individual package under the Tariff Act of 1930. The interim final rule does not change these requirements. Suppliers should work with importers to ensure the labels comply with COL requirements.

IV. FISH AND SHELLFISH PRODUCTS COVERED UNDER COL (“COVERED COMMODITIES”) AND EXEMPT

COL covers farm-raised fish and shellfish and wild caught fish and shellfish. This includes fillets, steaks, nuggets, and any other flesh (“covered commodities”).

A. PRODUCT EXEMPT OR NOT COVERED UNDER COL

1. Fish and shellfish covered commodities are exempt from COL under the rule if they are an ingredient in a processed food item

a. Processed food items

1. Change of character of the covered commodity

A processed food item is a retail item derived from fish or shellfish that has undergone specific processing resulting in a change in the character of the covered commodity. This includes cooking, curing, smoking and restructuring. The rule cites the following examples of a change in the character of the seafood which falls under the exemption:

<u>Cooking</u>	<u>Curing</u>	<u>Smoking</u>	<u>Restructuring</u>
Frying Broiling Grilling Boiling Steaming Baking Roasting	Salt curing Sugar curing Drying	Cold Hot	Emulsifying and extruding compression into blocks and cutting into portions (e.g., fish sticks)

2. Combinations with other commodities and food components and canned items

Processed food items that are exempt also include retail items derived from fish or shellfish that have been combined with at least one other covered commodity or other substantive food components (e.g., breading, tomato sauce), except that the addition of a component (such as water, salt or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. The rule cites the following examples of products exempt from COL under this section:

<u>Commodity Combination</u>	<u>Substantive Food Component Combination</u>	<u>Canned Items</u>
Scallops and shrimp in a seafood medley	Breaded shrimp Breaded fish fillets Coated shrimp Coconut shrimp Marinated fish fillets Surimi Mussels in tomato sauce Soups Stews Chowders Sauces Crab salad Shrimp cocktail Gefilte fish Sushi Pate	Canned tuna Canned sardines Canned salmon

V. RECORDKEEPING REQUIREMENTS

The interim final rule grants the Secretary of Agriculture (the “Secretary”) authority to require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance. Records may be maintained either in electronic or hard copy formats and various forms of documentation are acceptable.

A. SUPPLIERS

Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (i.e., harvesters, producers, handlers, distributors), must make available information to the subsequent purchaser about the country of origin and method of production of the covered commodity. This information may be provided

either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale provided it identifies the product and its countries of origin and methods of production by means of a lot number or other unique identifier. If after October 6, 2005, a frozen fish or shellfish covered commodity caught or harvested before December 6, 2004, is offered for retail sale and origin and/or method of production information is not known, the supplier must possess records to substantiate the date of harvest or capture of fish or shellfish.

Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction by means of a lot number or other unique identifier, for a period of 1 year from the date of the transaction. Examples of a unique identifier include: pack date, use by date, control numbers or other code.

B. WHOLESALERS (Intermediary Suppliers)

1. Pre-labeled products

Pre-labeled products are covered seafood commodities that contain a label with country of origin and method of production information either on individual consumer packages or on shipping containers. **The label itself is a sufficient record of the country of origin and method of production and need only be retained as long as the product is on hand. Once the pre-labeled covered commodity leaves the possession of an intermediary supplier, no further recordkeeping documenting country of origin and method of production is required. “Routine business documents” establishing the chain of custody of the product (i.e. invoices), must be maintained for one year.**

Example of Wholesaler Recordkeeping Compliance for Pre-labeled Products
<p>1. XYZ Wholesale Co. receives a bulk shipment of fresh fillets of farm-raised Icelandic salmon that has been processed in Iceland. The shipping container is labeled with “Product of Iceland” and “Farm-Raised.” XYZ Wholesale must keep the label from the shipping container for as long as it possesses the salmon and must retain the invoice for the salmon for one year.</p> <p>2. ABC Wholesale Co. receives a shipment of 30 count bags of wild Florida shrimp that have been processed in Florida. The bags are individually labeled with “Product of U.S.” and “Wild Caught.” The labels on the individual bags are considered records. ABC Wholesale need only retain the invoice for the shrimp for one year.</p>

2. Products that are not Pre-labeled

Wholesalers stocking covered seafood commodities that do not contain a label with country of origin or method of production on the shipping container or individual consumer package face a more onerous recordkeeping burden. In addition to maintaining invoices for one year, wholesalers are also required to maintain a record that states the country of origin, method of production and some form of tracking (i.e., pack date, use by date, control numbers, code) for the covered commodity.

Example of Wholesaler Recordkeeping Compliance for Products that are Not Pre-labeled

ABC Wholesale Co. receives a bulk shipment of wild caught, fresh scallops harvested in Maine. They are not labeled with country of origin or method of production. ABC Wholesale must retain the invoice for a period of one year and also must maintain a record that states the country of origin, method of production and some form of tracking (i.e., pack date, use by date, control numbers, code) for the scallops for a period of one year.

3. Wholesaler liability limited.

Any intermediary supplier (i.e., not a supplier responsible for initiating a country of origin declaration and method of production designation) handling a covered commodity that is found to be designated incorrectly for country of origin declaration and method of production shall not be held liable for a violation by reason of the conduct of another if the intermediary supplier could not have been reasonably expected to have had knowledge of the violation.

B. RETAILERS

1. Pre-labeled products

Pre-labeled products are covered seafood commodities that contain a label with country of origin and method of production information either on individual consumer packages or on shipping containers. **The label itself is a sufficient record of the country of origin and method of production and need only be retained as long as the product is on hand.** The label must be retained at the store level. **Once the pre-labeled covered commodity leaves the possession of a retailer, no further recordkeeping documenting country of origin and method of production is required.** “Routine business documents” establishing the chain of custody of the product (i.e. invoices), **must be maintained at store level for as long as the product is on hand and for one year from the date the product is made available to the consumer.** After the covered commodity has been sold, the “routine business documents” may be maintained either at store level or at a central location such as a point of distribution, warehouse, central offices or other off-site location.

Example of Retailer Recordkeeping Compliance for Pre-labeled Products

1. ABC Grocery receives a bulk shipment of fresh filets of farmed tilapia raised and processed in the Dominican Republic. The shipping container is labeled with “Product of the Dominican Republic” and “Farm-raised.” ABC Grocery must retain the label from the shipping container at store level for as long as the product is on hand. ABC grocery must retain the invoice for the tilapia in the store for as long as the product is on hand. After the tilapia leaves ABC Grocery’s possession, it may store the invoice at store level or in a central location.
2. XYZ Grocery receives a shipment of 3 lb bags of live, farm-raised mussels cultivated in Maine. Each bag is individually printed with “Product of U.S.” and “Farm-raised.” The individual bags suffice as records of the country of origin and method of production. XYZ Grocery need only maintain the invoice for the mussel shipment at the store level for as long as the product is on hand. After the mussels leave XYZ Grocery’s possession, it may store the invoice at store level or in a central location.

2. Products that are Not Pre-labeled

Retailers stocking covered seafood commodities that do not contain a label with country of origin or method of production on the shipping container or individual consumer package face a more onerous recordkeeping burden. In addition to maintaining invoices for one year, retailers are also required to maintain a record that states the country of origin, method of production and some form of tracking (i.e., pack date, use by date, control numbers, code) for the covered commodity.

Example of Retailer Recordkeeping Compliance for Products that are Not Pre-labeled

ABC Grocery receives a bulk shipment of wild caught, fresh squid harvested and processed in California. They are not labeled with country of origin or method of production. ABC Grocery must retain the invoice for a period of one year and also must maintain a record that states the country of origin, method of production and some form of tracking (i.e., pack date, use by date, control numbers, code) for the squid.

3. Retailer liability limited.

Any retailer handling a covered commodity that is found to be designated incorrectly as to country of origin and/or the method of production shall not be held liable by reason of the conduct of another if the retailer could not have been reasonable expected to have had knowledge of the violation.

VI. ENFORCEMENT

Routine compliance reviews may be conducted at retail establishments and associated administrative offices, and at supplier establishments. **Only the USDA will be able to initiate enforcement actions against a person found to be in violation of**

the law. USDA may also conduct investigations of complaints **made by any person alleging violations of these regulations** when the Secretary determines that reasonable grounds for such investigation exist.

The interim final rule for seafood COL is effective April 4, 2005. USDA will be conducting an education and outreach program for the six months following the effective date in which the focus will be on educating the industry on how to comply rather than enforcement.

The interim final rule states that the USDA will seek to enter into partnerships with States having existing administrative infrastructure to assist in enforcement.

Retailers and suppliers, upon being notified of the commencement of a compliance review, must make all records or other documentary evidence material to the review available to USDA representatives in a timely manner during normal business hours and provide any necessary facilities such inspections.

The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to \$10,000 for each violation of the Act. For retailers, the law states that if the Secretary determines that a retailer is in violation of the Act, the Secretary must notify the retailer of the determination and provide the retailer with a 30-day period during which the retailer may take necessary steps to comply. If upon completion of the 30-day period the Secretary determines the retailer has willfully violated the Act, after providing notice and an opportunity for a hearing, the retailer may be fined not more than \$10,000 for each violation.