



ACTION ALERT

March 28, 2005

USDA Seafood COL Rule Effective April 4

Seafood Suppliers Must Provide Necessary Information and Documentation; Enforcement Expected to Start in Fall 2005

1. **On April 4, 2005, the interim final rule (IFR) for country of origin labeling (COL) of fish and shellfish goes into effect. Although the IFR takes effect on April 4, USDA has made it clear that for the next six months they do not intend to enforce the rule, instead focusing on educating the industry about compliance. The final seafood COL rule has yet to be issued and the IFR still contains ambiguities and outstanding issues. Only USDA has authority to initiate enforcement actions under this rule. On March 28, 2005, USDA issued additional guidance in a Notice to the Trade ("Notice"). In the Notice, USDA incorporated many of N.G.A.'s recommended changes to the IFR as submitted in our comments to the agency dated February 2, 2005. The Notice includes a clarification that lot number tracking is not necessary and also lessens the recordkeeping requirements. Both clarifications to the IFR represent a significant improvement for N.G.A. members and the entire grocery industry. N.G.A. along with other impacted industries and associations will continue to press for repeal of all forms of mandatory country of origin labeling in favor of a voluntary program.**

2. **The seafood COL regulation mandates that suppliers must provide retailers with the method of production and country of origin information needed for compliance. This information may be provided in the following ways:**

- a. On the product itself
- b. On the master shipping container
- c. In a document that accompanies the product through retail sale provided it identifies the product and its country(ies) of origin and method(s) of production by means of a lot number or other unique identifier.

3. **Beginning April 4, according to the rule, retailers are required to provide consumers with country of origin and method of production (wild caught or farm raised) information for all covered seafood commodities and certain records must be kept. Ensure that you have seafood properly displayed in your stores.**

Acceptable forms and placements of designating the country of origin and method of production 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	<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>
Twist tie	
Pin tag	
Other clear and visible sign <i>Text may be typed, printed or handwritten</i>	

**4.
Retailers
and**

wholesalers should not accept or sell covered seafood commodities for which the country of origin and method of production information is not provided by their seafood suppliers. In responding to a question on this subject that N.G.A. posed to the USDA official who addressed our convention; Associate Deputy Administrator at the Agricultural Marketing Service, Bill Sessions stated retailers and wholesalers should not accept or sell covered seafood commodities for which the country of origin and method of production information are not provided by the supplier.

5. Recordkeeping Requirements: As a result of N.G.A.’s comments to USDA, retailers and wholesalers do not have to track or maintain records of lot numbers for covered seafood commodities as previously required by the IFR—a major victory for the industry. The Notice states that “routine business documents” suffice for maintaining the chain of custody of covered seafood commodities.

a. Recordkeeping Retention: USDA also heeded significant components of N.G.A.’s comments relating to recordkeeping retention. For products **pre-labeled** with country of origin and method of production (i.e. consumer packages or shipping containers), the label itself is a sufficient record and need only be maintained by intermediary suppliers and retailers for so long as the product is on hand. For covered seafood commodities that are **not pre-labeled**, records as to the COL information must be kept at store level for as long as the product is on hand and retained at store level or a central location for a period of one year from the date the designation is made at retail. Suppliers must also maintain country of origin and method of production information for products that are not pre-labeled for a period of one year. **To minimize recordkeeping burdens, independent retailers and wholesalers should demand that suppliers pre-label all covered seafood commodities.**

6. N.G.A. has been providing retailers and wholesalers with key information on seafood COL over the past few months; we also have submitted comments to USDA on COL throughout the rulemaking process. **Retailers and wholesalers should visit our website www.nationalgrocers.org to download the following information on the interim final seafood COL rule:**

- a. **USDA Notice to the Trade dated March 2005 and press release dated March 25, 2005**
- b. **Handbook for compliance**
- c. **Brief outline for retailers**
- d. **N.G.A. comments to USDA**
- e. **Slides USDA presented on seafood COL at our convention**

7. Enforcement Status: USDA will be conducting an education and outreach program for the six months following the effective date. USDA has indicated that they will take a lenient approach in enforcement during the six months following the effective date by focusing on educating retailers on how to comply with the rule rather than on imposing penalties. We expect USDA will clarify the details of the education and outreach period in upcoming weeks and we will notify you immediately of any details. Only USDA may initiate an enforcement action. **By putting forth its best efforts to comply during the six month education and outreach period, the grocery industry can demonstrate that an industry driven, voluntary COL program is a preferable policy option.**

8. While the interim final rule is subject to change, USDA is unlikely to issue a final rule before the April 4 effective date. N.G.A. is still pushing for repeal of all forms of country of origin labeling, including seafood.

9. Please contact N.G.A.'s Director of Government Affairs, Erik Lieberman at 703-516-8811 or elieberman@nationalgrocers.com with any questions or for more information.