

**SJR**

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SENATOR KIM ELTON

## MEMORANDUM

**DATE:** January 20, 2005

**TO:** Senator Tom Wagoner, Chair  
Senate Resources Committee

**FROM:** Senator Kim Elton

**SUBJ:** Hearing Request for SJR 3, relating to the labeling of fish products and processed food items containing fish to identify the country of origin and to distinguish between wild and farmed fish and fish products.

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I respectfully request a hearing for SJR 3, which asks that canned and smoked fish products be included under the Farm Security and Rural Investment Act of 2002, Country of Origin Labeling (COOL).

The deadline for comments to the U.S. Department of Agriculture (USDA) is February 2, 2005. The House companion resolution is also being considered in the coming week and I would appreciate your help moving this resolution in time to meet that federal deadline.

I ask that you hear SJR 3 at your earliest convenience.

-----ALASKA SENATE-----

**SENATE JOINT RESOLUTION NO. 3**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY SENATOR ELTON**

**Introduced: 1/14/05**  
**Referred: Resources**

**A RESOLUTION**

1 **Relating to the labeling of fish products and processed food items containing fish to**  
2 **identify the country of origin and to distinguish between wild and farmed fish and fish**  
3 **products.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **WHEREAS** Americans deserve wholesome foods and information about the contents  
6 and production of their food supply; and

7 **WHEREAS** concerns have recently been raised about the safety of farmed fish; and

8 **WHEREAS** Alaska's fish production is distinct from farmed fish production because  
9 Alaska fish are wild, free-ranging, and, therefore, naturally wholesome and healthy; and

10 **WHEREAS** there are numerous outstanding issues regarding public policy, fair trade,  
11 and the social and economic consequences of farmed fish production; and

12 **WHEREAS** more and more consumers are expressing a preference for, and  
13 requesting, wild fish over farmed fish; and

14 **WHEREAS** both the Alaska State Legislature and the United States Congress have  
15 passed labeling laws specifically to inform consumers about fish and other food products; and

1           **WHEREAS** the United States Department of Agriculture has exempted processed  
2 food items from federal country of origin labeling requirements; and

3           **WHEREAS** the only Alaska fish products available to many Americans are canned,  
4 smoked, or otherwise processed;

5           **BE IT RESOLVED** that the Alaska State Legislature supports the timely labeling of  
6 fish and fishery food products in the market place to identify the country of origin and to  
7 distinguish between wild fish and farmed fish; and be it

8           **FURTHER RESOLVED** that the Alaska State Legislature supports the labeling of  
9 processed food items containing fish to identify the country of origin of the fish and to  
10 distinguish between wild fish products and farmed fish products.

11           **COPIES** of this resolution shall be sent to the Honorable George W. Bush, President  
12 of the United States; the Honorable Don Evans, United States Secretary of Commerce; the  
13 Honorable Ann M. Veneman, United States Secretary of Agriculture; and the Honorable Ted  
14 Stevens and the Honorable Lisa Murkowski, U.S. Senators, and the Honorable Don Young,  
15 U.S. Representative, members of the Alaska delegation in Congress.



SENATOR KIM ELTON

**SJR 3**  
**Sponsor Statement**

*"Relating to the labeling of fish products and processed food items containing fish to identify the country of origin and to distinguish between wild and farmed fish and fish products."*

As Alaskans, we all know that Alaska's wild fish tastes better and is healthier than farmed fish. Alaskans have long shown their support of country-of-origin labeling (COOL) and labeling of farmed or wild fish. These national labeling standards will help maintain the vitality of Alaska's fishing industry by allowing consumers to make informed choices in the marketplace.

Under the Farm Security and Rural Investment Act of 2002, COOL requirements for fish were to be implemented on September 30, 2004. However, the United States Department of Agriculture (USDA) has pushed the effective date to April 2005 and extended the comment period on proposed regulations to February 2, 2005. Included in the proposed regulations is an exclusion for processed food items, which would include canned and smoked fish. Many Alaskan fish products are processed in some way and sometimes these are the only products available to many Americans.

Senate Joint Resolution 3 supports the timely implementation of COOL and opposes the exclusion of processed food items from the requirements.

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ALASKA SENATE

# AMS NEWS RELEASE

AMS No. 277-04

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## **USDA EXTENDS COMMENT PERIOD FOR INTERIM FINAL RULE FOR MANDATORY COUNTRY OF ORIGIN LABELING OF FISH AND SHELLFISH**

WASHINGTON, Dec. 27, 2004 — The U.S. Department of Agriculture's Agricultural Marketing Service today announced that it is extending the comment period on the interim final rule for the mandatory country of origin labeling program for fish and shellfish. The Jan. 3, 2005, deadline has been extended to Feb. 2, 2005.

"We are extending the comment period to ensure that all those wishing to comment have the opportunity to do so," said A.J. Yates, AMS administrator. "We strongly encourage all interested parties to submit comments."

The interim final rule was published in the Oct. 5, 2004, *Federal Register*. Details of the comment period extension will be published in the Dec. 28, 2004, *Federal Register*. Comments may be sent via e-mail to: [cool@usda.gov](mailto:cool@usda.gov) or sent regular mail to: Country of Origin Labeling Program, Agricultural Marketing Service, 1400 Independence Ave. SW, USDA STOP 0249, Washington DC 20250-0249, no later than Feb. 2, 2005. Copies of the interim final rule and additional information can be found at: <http://www.ams.usda.gov/cool/index.htm>.

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Return to AMS News Releases



# Federal Register

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Tuesday,  
October 5, 2004

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## Part IV

### Department of Agriculture

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Agricultural Marketing Service

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7 CFR Part 60

Mandatory Country of Origin Labeling of  
Fish and Shellfish; Interim Rule

maintained for a period of 1 year from the date the origin and production designations are made at retail.

#### How Does This Regulation Impact Existing State Country of Origin Labeling Programs?

To the extent that State country of origin labeling programs encompass commodities which are not governed by this regulation, the States may continue to operate them. For those State country of origin labeling programs that encompass commodities that are governed by this regulation, these programs are preempted.

#### Can Food Products That Are Not Covered by This Regulation Be Voluntarily Labeled With COOL Information?

Yes. Such voluntary claims must be truthful and accurate and adhere to existing Federal labeling regulations.

#### Prior Documents in This Proceeding

This interim final rule is issued pursuant to the Farm Bill, the 2002 Appropriations, and the 2004 Appropriations, which amended the Act.

On October 11, 2002, AMS published Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts (67 FR 63367) providing interested parties with 180 days to comment on the utility of the voluntary guidelines.

On November 21, 2002, AMS published a notice requesting emergency approval of a new information collection (67 FR 70205) providing interested parties with a 60-day period to comment on AMS' burden estimates associated with the recordkeeping requirements as required by the Paperwork Reduction Act of 1995 (PRA). On January 22, 2003, AMS published a notice extending this comment period (68 FR 3006) an additional 30 days.

On October 30, 2003, AMS published the proposed rule for the mandatory COOL program (68 FR 61944) with a 60-day comment period. On December 22, 2003, AMS published a notice extending the comment period (68 FR 7139) an additional 60 days.

#### Overview of the Law

Section 10816 of Public Law 107-171 (7 U.S.C. 1638-1638d) amended the Act (7 U.S.C. 1621 *et seq.*) to require retailers to inform consumers of the country of origin of covered commodities beginning September 30, 2004.

The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. COOL is a retail labeling program and as such does not provide a basis for addressing food safety. Seafood products, both imported and domestic, must meet the food safety standards of the Food and Drug Administration (FDA). The law defines the term "covered commodity" as muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; and peanuts. The law excludes items from needing to bear a country of origin declaration when a covered commodity is an "ingredient in a processed food item." The law defines the terms "retailer" and "perishable agricultural commodity" as having the meanings given those terms in PACA. The law defines the term "wild fish" as naturally-born or hatchery-raised fish and shellfish harvested in the wild and excludes net-pen aquacultural or other farm-raised fish.

The law specifically outlines the criteria a covered commodity must meet in order to bear a "United States country of origin" declaration. In the case of farm-raised fish and shellfish, the covered commodity must be derived from fish or shellfish hatched, raised, harvested, and processed in the United States. In the case of wild fish and shellfish, the covered commodity must be derived from 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. In addition, the law also requires that fish and shellfish covered commodities be labeled to indicate whether they are wild or farm-raised.

To convey the country of origin information, the law states that retailers may use a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. Food service establishments, such as restaurants, cafeterias, food stands, and other similar facilities are exempt from these labeling requirements.

The law makes reference to the definition of "retailer" in section 1(b) of PACA as the meaning of "retailer" for the application of the labeling requirements under the COOL law. Under this interim final rule, a retailer is any person engaged in the business of selling any perishable agricultural commodity at retail. Retailers are

required to be licensed when the invoice cost of all purchases of produce exceeds \$230,000 during a calendar year. 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 this rule.

The law requires any person engaged in the business of supplying a covered commodity to a retailer to provide the retailer with the product's country of origin information. In addition, the law states the Secretary of Agriculture may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail. The law prohibits the Secretary from using a mandatory identification system to verify the country of origin of a covered commodity and provides examples of existing certification programs that may be used to certify the country of origin of a covered commodity. The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to \$10,000 for each violation. The law also encourages the Secretary to enter into partnerships with States with enforcement infrastructure to the extent possible to assist in the program's administration.

## II. Highlights of This Interim Final Rule

### Covered Commodities

The term "covered commodity" includes: farm-raised fish and shellfish (including filets, steaks, nuggets, and any other flesh) and wild fish and shellfish (including filets, steaks, nuggets, and any other flesh).

### Exclusion for Ingredient in a Processed Food Item

Items are excluded from labeling under this regulation when a covered commodity is an ingredient in a processed food item. Under this interim final rule, a "processed food item" is defined as: a retail item derived from fish or shellfish that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (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. Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking,

roasting), curing (e.g., salt curing, sugar curing, drying), smoking (cold or hot), and restructuring (e.g., emulsifying and extruding, compressing into blocks and cutting into portions). Examples of items excluded include fish sticks, surimi, mussels in tomato sauce, seafood medley, coconut shrimp, soups, stews, and chowders, sauces, pates, salmon that has been smoked, marinated fish fillets, canned tuna, canned sardines, canned salmon, crab salad, shrimp cocktail, gefilte fish, sushi, and breaded shrimp.

#### *Labeling Covered Commodities of United States Origin*

The law prescribes specific criteria that must be met for a covered commodity to bear a "United States country of origin" declaration. The specific requirements for each commodity are as follows:

(a) **Farm-raised Fish and Shellfish**—covered commodities must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States.

(b) **Wild Fish and Shellfish**—covered commodities must be derived exclusively from fish or shellfish either 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 (as established by U.S. Customs and Border Protection) outside of the United States.

#### *Labeling Country of Origin for Imported Products That Have Not Been Substantially Transformed in the United States*

Under this interim final rule, an imported covered commodity shall retain its 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 (as established by U.S. Customs and Border Protection) in the United States.

Covered commodities imported in consumer-ready packages are currently required to bear a country of origin declaration on each individual package under the Tariff Act of 1930 (Tariff Act). This interim final rule does not change these requirements.

#### *Labeling Imported Products That Have Been Substantially Transformed in the United States*

Under this interim final rule, in the case of wild fish and shellfish, if a covered commodity was imported from country X and substantially transformed (as established by U.S. Customs and Border Protection guidelines and policies) in the United States or aboard a U.S. flagged vessel, the product shall be labeled at retail as "From [country X], processed in the United States." The covered commodity must also be labeled to indicate that it was derived from wild fish or shellfish.

In the case of farm-raised fish, if a covered commodity was imported from country X at any stage of production and substantially transformed (as established by U.S. Customs and Border Protection guidelines and policies) in the United States, the product shall be labeled at retail as "From [country X], processed in the United States." The covered commodity shall also be labeled to indicate that it was derived from farm-raised fish or shellfish.

#### *Defining Country of Origin for Blended Products*

Under this interim final rule, the country of origin declaration of blended or commingled retail food items comprised of the same covered commodity (e.g., bag of shrimp) having different origins, shall indicate the countries of origin for covered commodities in accordance with existing Federal legal requirements when the commingled product contains imported covered commodities that have not subsequently been substantially transformed in the United States. When the retail product contains imported covered commodities that have subsequently undergone substantial transformation in the United States (either prior to or following substantial transformation in the United States) and/or U.S. origin covered commodities, the declaration shall indicate the countries of origin contained therein or that may be contained therein.

#### *Remotely Purchased Products*

For sales of a covered commodity in which the customer purchases a covered commodity prior to having an opportunity to observe the final package (e.g., Internet sales, home delivery sales, etc.) the retailer may provide the country of origin and method of production information (wild and/or

farm-raised), either on the sales vehicle or at the time the product is delivered to the consumer.

#### *Markings*

Under this interim final rule, the country of origin declaration and method of production (wild and/or farm-raised) designation may be provided to consumers by means of a label, stamp, mark, placard, band, twist tie, pin tag, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. The country of origin declaration and method of production (wild and/or farm-raised) designation may be combined or made separately. Except as provided in § 60.200(g) and § 60.200(h)(2) of this regulation, the declaration of the country(ies) of origin of a product shall be listed according to existing Federal legal requirements.

Abbreviations and variant spellings that unmistakably indicate the country of origin, such as "U.K." for "The United Kingdom of Great Britain and Northern Ireland" are acceptable. The adjectival form of the name of a country may be used as proper notification of the country(ies) of origin of imported commodities provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. Symbols or flags alone may not be used to denote country of origin.

With respect to the production designation, various forms of the production designation are acceptable, including "wild caught," "wild," "farm-raised," "farmed," or a combination of these terms for blended products that contain both wild and farm-raised fish or shellfish provided it can be readily understood by the consumer and is in conformance with other Federal labeling laws. Designations such as "ocean caught," "caught at sea", "line caught," "cultivated," or "cultured" do not meet the requirements of this regulation. Alternatively, the method of production (wild and/or farm-raised) designation may also be in the form of a check box. However, the labeling requirements under this rule do not supersede any existing Federal legal requirements, unless otherwise specified, and any such country of origin and method of production (wild and/or farm-raised) notification must not obscure or intervene with other labeling information required by existing regulatory requirements.

In order to provide the industry with as much flexibility as possible, this rule does not contain specific requirements