

Country of Origin Labeling Compliance and Enforcement Requirements

1) Purpose

This document defines the requirements for compliance and enforcement of Title 7 CFR 60 and 65: Mandatory Country of Origin Labeling (COOL). The requirements described within this document apply to retailers and suppliers of covered commodities to retail stores.

2) Reference Documents

- a) *7 CFR Parts 60 and 65: Federal Register, Vol. 74, pp 2658-2707, January 15, 2009, Final Rule – 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.*
- b) *Federal Register, Vol. 78, pp 31367-31385, May 24, 2013, Final Rule – Change in the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and amends the definition for “retailer.”*
- c) *Country of Origin Labeling Surveillance Review Procedures for Retail Facilities.*
- d) *Country of Origin Labeling Follow-Up Review Procedures.*
- e) *COOL Retail Surveillance Workbook.*
- f) *Country of Origin Labeling Supplier Traceback Audit Procedures.*
- g) *Bureau of Customs and Border Protection Service Form 7501.*

3) Summary

- a) The provisions of the Final Rule (FR) for the 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 became effective on March 16, 2009. The FR was published in the *Federal Register* on January 15, 2009, and requires designated retailers to label covered commodities for country of origin and, in the case of fish and shellfish covered commodities, method of production. On May 23, 2013, the USDA Agricultural Marketing Service (AMS) issued a final rule that made changes to the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and amended the definition for “retailer.” 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. The full text of the original and amended FR can be found at: www.ams.usda.gov/cool.

- b) To convey the country of origin and method of production information, the FR 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. This information may be typed, printed, or handwritten provided it is in conformance with other Federal labeling laws and does not obscure other labeling information required by Federal regulation. In addition, this information may be combined or listed separately and must be placed in a conspicuous location, so as to render it likely to be read and understood by a customer under normal conditions of purchase. Food service establishments, such as restaurants, cafeterias, food stands, and other similar facilities are exempt from these labeling requirements.
- c) The FR also requires that any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must make available information to the retailer or buyer about the country(ies) of origin and method of production (wild and/or farm-raised), if applicable, 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 that the document identifies the covered commodity and its country(ies) of origin and method of production, if applicable.
- d) In addition, the statute states the Secretary of Agriculture (Secretary) may conduct an audit of any person that prepares, stores, handles, or distributes a covered commodity for retail sale to verify compliance. Records maintained in the normal course of business that verify country of origin and method of production declarations, as applicable, are necessary in order to verify that retailers are provided with credible information on which to base origin and method of production declarations. The FR prohibits the Secretary from using a mandatory identification system to verify the country of origin of a covered commodity. The statute contains enforcement provisions for both retailers and suppliers that include civil penalties of up to \$1,000 for each willful violation and also encourages the Secretary to enter into partnerships with States with enforcement infrastructure to the extent possible to assist in the program's administration.

4) Definitions

- a) USDA – The responsible authority for enforcing the requirements of the COOL regulation is the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Livestock, Poultry and Seed Program (LPS), COOL Division, referred to as USDA in this document.
- a) Retailer – Any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)). Retailers (primarily grocery stores and supermarkets) are subject to the final rule and are required to make country of origin information for covered commodities and, if applicable, method of production, available to consumers. Food service establishments (cafeterias, restaurants, etc.) are excluded from COOL requirements. Because COOL is solely a domestic labeling law, exporters and exported commodities are not subject to its requirements.

- b) Supplier – Any organization or person engaged in the business of supplying a covered commodity to a retailer either directly or indirectly. Suppliers must make available information to the purchaser about the country or origin and, if applicable, method of production of the covered commodity.
- c) COOL-certified – State and federal officials are required to be COOL-certified prior to conducting retail reviews or supplier traceback audits. Investigative officials are trained directly by USDA, or trained by other approved officials that have been directly trained by USDA. They conduct retail surveillance activities and supplier traceback audits and have met the minimum proficiency requirement on annual COOL examinations.
- d) Good Faith Effort – Retailers must take sound, reasonable measures to provide accurate country of origin and, if applicable, method of production information to their customers in accordance with the FR. Suppliers must take sound, reasonable measures to provide accurate country of origin and, if applicable, method of production information to retailers in accordance with the FR. In the event that retailers or suppliers are formally notified of non-compliances by USDA, the responsible firm must analyze the non-compliances and implement appropriate and effective corrective actions and preventative measures to ensure full compliance with the FR. The responding firm must respond in writing to USDA within specified timeframes and identify the corrective actions and preventative measures implemented to address the identified non-compliances.
- e) Willful Violations - The COOL Statute authorizes USDA to levy civil penalties if the retailer or supplier has not made a good faith effort to comply with the regulation and continues to willfully violate the COOL statute after receiving written notification of non-compliances and being provided 30 days to implement effective corrective actions and preventative measures.
 - i) Retailers: Retail facilities may be referred to USDA’s Office of the General Counsel (OGC) for further administrative action and possible civil penalties based on one or more of the following criteria that constitutes willful violations:
 - (1) The results of a follow-up review indicate that the corrective actions and preventative measures detailed in the retailer’s written response to the notice of non-compliance findings demonstrates that the corrective actions and preventative measures were either not implemented or ineffective. Ineffective corrective actions and preventative measures would be validated by the number of non-compliance (NC) findings in a follow-up review when the same or greater number of NC findings are identified as were found during a previous retail store review; or, findings in a follow-up review indicate that most or all of the same commodity categories continue to have NC findings or are otherwise out of compliance with COOL requirements as were found during a previous retail store review.
 - (2) The retailer fails to respond in writing within specified time frames with a description of corrective actions and preventative measures to address findings of non-compliance; or if applicable,

- (3) Other findings or results which indicate that the retailer has not made a good faith effort to comply with the COOL requirements and continues to not comply after receiving official notification from USDA.
- ii) Suppliers: Suppliers may be referred to USDA's OGC for further administrative action and possible civil penalties based on one or more of the following criteria that constitutes willful violations:
- (1) The results of an audit indicate that the corrective actions and preventative measures detailed in the written response from a supplier in response to the notice of NC findings were either not implemented or ineffective. Ineffective corrective actions and preventative measures would be validated by the same or similar findings of non-compliance in a follow-up audit that were found in a previous audit.
 - (2) The supplier fails to respond in writing within specified time frames with a description of corrective actions and preventative measures to address findings of non-compliance; or if applicable,
 - (3) Other findings or results which indicate that the supplier has not made a good faith effort to comply with the COOL requirements and continues to not comply after receiving official notification from USDA.

5) Enforcement Policy

Retail and Supplier COOL compliance will be determined through retail store reviews and supplier traceback audits, which shall be conducted by USDA or State officials operating under cooperative agreements between the appropriate State agencies and USDA. USDA designated procedures must be followed when conducting all retail reviews, follow-up retail reviews, and supplier traceback audits. Only USDA will be able to initiate enforcement actions against a retailer or supplier found to be in violation of the FR.

The following activities will be used to determine compliance with the COOL FR requirements:

- Retail store review.
- Follow-up retail store review.
- Supplier traceback audit in which a product sold at retail is traced back through the marketing chain to the point where the origin or method of production claim was initiated.
- Reviews based upon USDA receiving allegations of non-compliance in retail store facilities, (i.e., complaints).

- a) Retail Review Enforcement Protocol (Refer to illustration 1 in Appendix A)
- i) USDA randomly selects PACA (Perishable Agricultural Commodities Act) licensed retail stores to review on a periodic basis. The number of stores reviewed is determined by USDA.
 - ii) USDA assigns retail facilities for review in each State to COOL-certified officials. The number of retail stores to be reviewed in any given state is determined by USDA.
 - iii) COOL-certified state and federal officials conduct retail store reviews and complete assignments within the required time frame. The scope of the review is limited to covered commodities offered for sale at the time of the review. Reviewers observe the presence and accuracy of country of origin declarations and, in the case of fish and shellfish, method of production declarations. Reviewers also investigate retailers' record keeping and COOL information conveyance practices to verify that appropriate records from immediate previous suppliers are maintained and that information is accurately conveyed to consumers.
 - iv) Reviewers submit retail review documentation to USDA for further evaluation and follow-up actions.
 - v) Types of retail non-compliance (NC) findings:

NC Code	Description
1	Covered commodity is not identified with the country of origin.
2	Country of origin declaration is not legible or is not placed in a conspicuous location.
3	Country of origin declaration is not accurate at the point of sale.
4a	Use of "or," "and/or," "may contain" or other disjunctive labeling is not acceptable.
4b	Regional description for the item is not nationally distinct, or use of the term "locally grown" does not provide sufficient origin specificity.
4c	Production step information for muscle cuts are not present, or are not stated in an acceptable form.
5	Abbreviations and variant spellings do not unmistakably indicate the country of origin.
6	Covered commodity is not identified with the method of production.
7	Method of production declaration is not legible and/or is not placed in a conspicuous location.
8	Method of production declaration is not accurate at the point of sale.
9	Method of production is not stated in an acceptable form.

NC Code	Description (continued)
10	Records were not provided within 5 business days.
11	Records do not provide the country of origin information.
12	Records do not provide the method of production information.
13	Records do not provide the supplier's information.
14	Records do not accurately verify the country of origin information provided to consumers.
15	Records do not accurately verify the method of production information provided to consumers.
16	Records that identify the chain of custody for the pre-labeled item were not provided within 5 business days.

- vi) When a retailer is found to have apparent non-compliances with the COOL requirements, the agent conducting the review will notify the appropriate store personnel during the review.
 - vii) USDA will officially notify the retailer in writing of the nature of the non-compliances and the date the non-compliances were observed, and request the submission of corrective actions and preventative measures. A COOL-certified official may conduct a follow-up compliance review. If requested, USDA representatives will provide additional information to enhance the retailer's knowledge of the COOL requirements.
 - viii) Investigative officials operating on behalf of the COOL program will conduct follow-up reviews on retail stores rated as having critical weaknesses as described in section 6 within 18 months of the previous review. (Refer to illustration 2 in Appendix A.)
 - ix) When results of follow-up reviews indicate willful violations, the findings will be referred to USDA's Office of the General Counsel for further action, as appropriate.
- b) Supplier Traceback Audit Enforcement Protocol
(Refer to illustration 3 in Appendix A.)
- i) USDA randomly selects items for supplier traceback audit on a periodic basis. The items selected for supplier traceback audits will be derived from record information obtained during retail reviews.
 - ii) Supplier traceback audits are conducted by COOL Division Auditors.
 - iii) When suppliers are found to have apparent non-compliances of the COOL requirements, the agent conducting the audit will immediately notify the appropriate supplier personnel. USDA will officially notify the supplier in writing of the nature of the non-compliances and the date the non-compliances were observed, and request corrective actions and preventative measures be implemented. A USDA

representative will conduct a follow-up compliance audit. If requested, USDA personnel will provide additional information to enhance the supplier's knowledge of the COOL requirements.

iv) The scope of supplier traceback audits is limited to the covered commodities identified for traceback during the retail surveillance review and the supporting documentation that verifies compliance of the supplier with the COOL requirements. Auditors examine record documents provided by each supplier in the chain of commerce from the retail store to the initiator of country or origin and method of production claims to verify whether information is accurate and correctly transmitted through the supply chain.

v) Types of supplier non-compliance (NC) findings:

NC Code	Description
101	Records that verify an origin claim were not maintained for a period of 1 year from the date of transaction.
102	Records were not provided within 5 business days.
103	Retailer's records did not identify the covered commodity and retail supplier.
104	Supplier's records did not establish and identify immediate previous source.
105	Supplier's records did not identify the immediate subsequent recipient.
106	Supplier did not make country of origin information available to the immediate subsequent recipient.
107	Supplier did not make method of production information available to the immediate subsequent recipient.
108	Country of origin information was not conveyed accurately.
109	Method of production information was not conveyed accurately.
110	Supplier responsible for initiating the country of origin claim does not possess records that are necessary to substantiate that claim.
111	Supplier responsible for initiating the method of production claim does not possess records that are necessary to substantiate that claim.
112	Import records do not provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient.
113	Import records do not accurately identify the country of origin of the item.
114	Import records do not accurately identify the method of production of the item.

vi) Investigative officials operating on behalf of the COOL program will conduct follow-up audits on suppliers with non-compliance findings within 2 years to ensure corrective actions and preventative measures implemented by the supplier are effective.

c) Complaint-Driven Compliance Investigation – In addition to conducting routine surveillance through retail store reviews and supplier traceback audits, USDA will also respond to consumer complaints. Any consumer that wishes to file a complaint should send an email to cool@ams.usda.gov, contact the COOL Division by phone at (202) 720-

4486, or submit the concern in writing to 1400 Independence Avenue, SW., Washington, DC 20250-0216, that includes the following information: the name and address of the store in which the apparent non-compliance occurred, a detailed description of the product and the apparent non-compliance, and the date the product was observed. USDA personnel will investigate all complaints received and take the appropriate action.

- d) Other Enforcement Measures – In addition to the COOL enforcement provisions described above, statements regarding a product's origin and method of production must also comply with other existing Federal statutes. For example, the Federal Food, Drug and Cosmetic Act prohibits false or misleading labeling. The Perishable Agricultural Commodities Act states that it is a non-compliance to misrepresent the State, country, or region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce. Accordingly, findings of inaccurate labeling of country of origin and, if applicable, method of production of covered commodities may be referred to other regulatory entities.
- e) Referral to OGC – Once a retailer or supplier is referred to OGC, activities such as additional follow-up reviews or follow-up audits may result in requiring collection of pictures, data, or other information.

6) Compliance

Retail Review Compliance Rating Scale - The COOL Division notifies each retail store in writing where there are findings of non-compliance. In terms of rating the suitability of any store's COOL compliance system to ensure that COOL statements are present, accurate, and records can verify those statements, the COOL Division uses a compliance rating scale as a guideline for identifying the severity of a retailer's compliance system weaknesses. The following rating scale assesses COOL compliance for retail stores:

- a) *Adequate*: NC<4 AND NC as Percent of Commodity Count <5%
- b) *Compliance Deficiency*: NC ≥4 or NC as Percent of Commodity Count ≥5%
- c) *Critical Weakness*: NC>14 AND NC as Percent of Commodity Count ≥5%

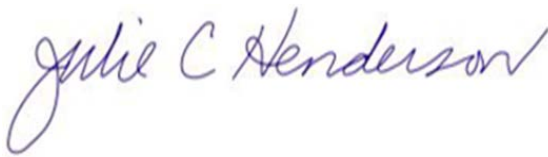
7) Response to a Notice of Non-Compliance

- a) When the results of the retail store review or supplier traceback audit find that a firm is not operating in compliance with the requirements of the FR, a non-compliance letter will be sent to the firm requesting they respond within 30 days with corrective actions and preventative measures. The letter will include a detailed checklist of findings of non-compliance.
 - i) The retailer or supplier must respond within thirty (30) days of receipt of this letter. The response must address both corrective actions and preventative measures taken to ensure compliance.
 - (1) Corrective actions to address the findings must be taken, and if applicable, all non-complying origin labels and record systems must be corrected. The retailer or supplier shall submit a written statement that details the corrective actions

taken. A checklist is attached to the official non-compliance letter that identifies and describes the items that were found to be out of compliance. The corresponding non-compliance code (NC code) assigned to each item can be cross referenced to the glossary on the first page of the checklist.

- (2) Preventative measures to implement an effective COOL compliance system in the retail or supply facility are also required. The response shall include a brief written statement that describes the specific preventative measures and standard operating procedures employed by the firm to maintain COOL compliance in the future. An effective COOL compliance system will include standard procedures used to assure that covered commodities are labeled in accordance with the COOL FR. The written response shall describe critical employee roles, training, and responsibilities to monitor and control the flow of information so that COOL statements are conspicuous, accurate, and stated in an acceptable form at retail, and that the retailer or supplier will remain in compliance with COOL requirements in the future.
- ii) Failure to include both corrective actions and preventative measures that address findings of non-compliance for both labeling and recordkeeping in a timely manner will result in the facility or supplier remaining non-compliant, and may result in further action and fines by USDA.

These guidelines are effective immediately.



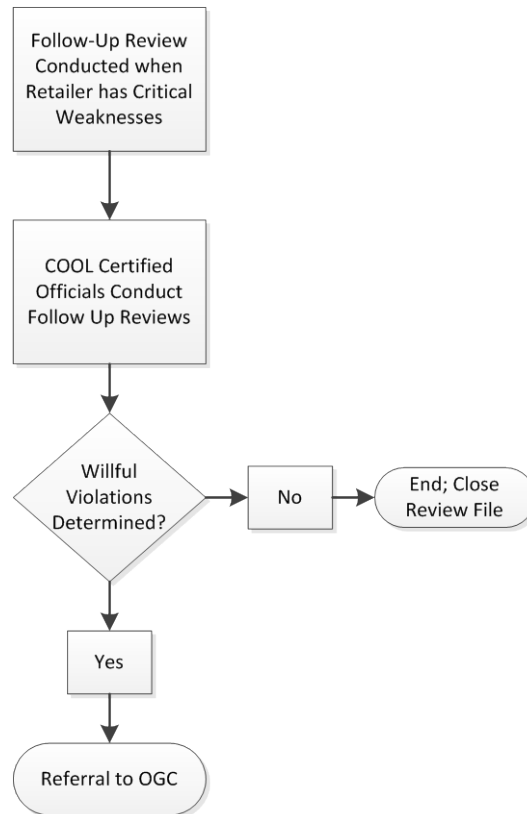
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Appendix A, Illustration 1: Retail Review Enforcement



Appendix A, Illustration 2: *Follow Up Retail Review Enforcement*



Appendix A, Illustration 3: Supplier Traceback Audit Enforcement

