

Country of Origin Labeling

Retailer Requirements and Surveillance Activities

September 30, 2015



THE VOICE OF FOOD RETAIL

Feeding Families  Enriching Lives

FMI Antitrust Statement

FMI believes strongly in competition. Our antitrust laws are the rules under which our competitive system operates. It is FMI's policy to comply in all respects with the antitrust laws.

Association meetings or workshops by their very nature bring competitors together. It is expected that all member representatives involved in FMI activities, as well as FMI consultants and other participants, will be sensitive to the legal issues and act in compliance with applicable antitrust and competition laws both at FMI meetings and FMI-sponsored events.

Accordingly, it is necessary to avoid discussions of sensitive topics that can create antitrust concerns. Agreements to fix prices, allocate markets, engage in product boycotts and to refuse to deal with third parties are illegal under the antitrust laws. At any association meeting discussions of prices (including elements of prices such as allowances and credit terms), quality ratings of suppliers, and discussions that may cause a competitor to cease purchasing from a particular supplier, or selling to a particular customer, should be avoided. Also, there should be no discussion that might be interpreted as a dividing up of territories.

An antitrust violation does not require proof of a formal agreement. A discussion of a sensitive topic, such as price, followed by action by those involved or present at the discussion is enough to show a price fixing conspiracy. As a result, those attending an association-sponsored meeting should remember the importance of avoiding not only unlawful activities, but even the appearance of unlawful activity.

As a practical matter violations of these rules can have serious consequences for a company and its employees. Antitrust investigations and litigation are lengthy, complex and disruptive. The Sherman Act is a criminal statute, and may even result in penalties punishable by steep fines and imprisonment. The Justice Department, state attorneys general and any person or company injured by a violation of the antitrust laws may bring an action for three times the amount of the damages, plus attorney's fees.

If you have any questions or concerns at this meeting, please bring them to the attention of FMI staff.



Agricultural Marketing Service

Creating Opportunities for American Farmers and Businesses

Country of Origin Labeling

Retailer Requirements and Surveillance Activities

for **Food Marketing Institute Members**

September 30, 2015

Country of Origin Labeling (COOL) is a labeling law that requires retailers, such as full-line grocery stores, supermarkets, and club warehouse stores to notify their customers with information regarding the source of certain foods.

Part 1 – Retailer Requirements

Part 2 – Surveillance Activities

Part 1 – Retailer Requirements

- Definition of “Retailer”
- Covered Commodities
- Determining Origin
- Labeling Flexibilities
- Recordkeeping

Retailer

Retailer means any person *subject* to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA) of 1930.

- The criteria for a retailer PACA license is annual purchases of at least \$230,000 for fruits and vegetables.
- The corporate headquarters typically holds the PACA license for all of their stores and may have more than one license.

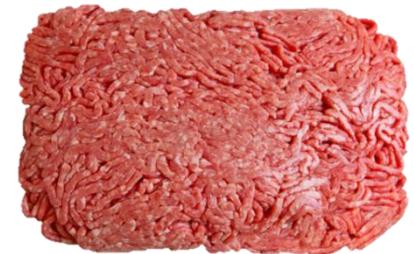
Retailer

Remotely Purchased Products, such as online sales that meet the PACA license criteria, are also subject to COOL requirements. (7 CFR § 65.300 Country of Origin notification):

“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 notification either on the sales vehicle or at the time the product is delivered to the consumer.”

Covered Commodity

- Fruits and Vegetables
- Fish and Shellfish
- Muscle Cut and Ground Meats
 - Beef, including Veal
 - Pork
 - Lamb
 - Goat
 - Chicken
- Peanuts, Pecans, Macadamia Nuts
- Ginseng



Determining Origin

Retailers convey information as provided by their suppliers to consumers. Origin declarations must be accurate and specific to the contents of the package or display.

Covered Commodity	Origin Declaration
Fruits and Vegetables, Nuts, and Ginseng	<ul style="list-style-type: none"> • Country(ies) where grown (grown also means “harvested”). • May be commingled. • State and regional names and state abbreviations accepted in lieu of country.
Fish and Shellfish	<ul style="list-style-type: none"> • Country(ies) where harvested or substantially transformed, (as determined by Customs and Border Protection upon import). • May be commingled. • Must also include Method of Production – Farm Raised or Wild Caught. • Farm Raised - fish or shellfish that have been harvested in controlled environments. • Wild Caught - caught, taken, or harvested from non-controlled waters or beds.
Meat Muscle Cuts	<ul style="list-style-type: none"> • For U.S. harvest, must include animal production steps, born, raised, and harvested. • Cannot be commingled. • Imported muscle cuts only need to list country of origin (“Product of Australia”).
Ground Meats	<ul style="list-style-type: none"> • Must list all countries of origin that may be reasonably contained therein. • Origin must be within the processor’s inventory in the past 60 days. • May be commingled.

Labeling Flexibilities

- General - Labeling of covered commodities offered for sale whether individually, in a bulk bin, carton, crate, barrel, cluster, or consumer package must contain country of origin.
- Exclusions - A covered commodity is excluded from this subpart if it is an ingredient in a processed food item.
- Labels - Declarations can either be in the form of a placard, sign, label, sticker, band, twist tie, pin tag, or other format that allows consumers to identify the country of origin, or may be in the form of a check box.

Recordkeeping

Retailers' records:

- Any records used in the **normal course** of business that verify a country of origin claim.
- May be maintained **in any location** and **in any format**.
- Are used to identify the covered commodity, the retailer's immediate previous supplier, and the country of origin (and method of production in the case of fish and shellfish).
- Must be **maintained for a period of one year** from the date the origin declaration is made at retail.

Recordkeeping

- (1) In general, retailers are to **convey the origin information provided by their suppliers.**
- (2) Records must either be **maintained at the retail facility or at another location for as long as the product is on hand** and provided to any duly authorized representative of USDA.

Recordkeeping

- (3) For pre-labeled products (consumer-ready packages and master containers), the label itself is sufficient information on which the retailer may rely to establish the product's origin, and no additional records ***documenting origin information*** are necessary.
- (4) For records that identify the covered commodity, the retail supplier, and products that are not pre-labeled, the country of origin information must be **maintained for a period of 1 year** from the date the origin declaration is made at retail.

Part 2 – Surveillance Activities

- Enforcement
- Types of Retail Reviews
- Retail Review Expectations
- Compliance Rating Criteria
- Responding to Notices of Non-Compliance
- FY 2016

Enforcement

- The COOL Division partners with state agencies to assist with administration of the program.
- State cooperators are trained and certified by COOL Specialists to conduct retail reviews in store locations assigned by the COOL Division.
- Assigned retail locations to state cooperators are dependent on the previous year's store compliance rating, responsiveness, and overall trends.
- COOL Division Auditors audit individual products through the supply chain to verify accuracy of COOL claims.

Retail Review Assignment History

Year	Initial Retail Reviews	Follow Up Retail Reviews
2009	5,000	0
2010	7,741	622
2011	4,005	1,190
2012	3,836	546
2013	2,061	547
2014	3,028	563
2015	845	2,372
Total	26,516	5,840

Types of Retail Reviews

Initial Reviews

- Conducted in stores once every 5 years.
- All covered commodities reviewed for labeling compliance.
- Recordkeeping compliance is assessed by interview questions.

Follow Up Reviews

- Past critical compliance weakness, non-responsive or inadequate corrective actions, and preventative measures.
- All covered commodities reviewed for labeling compliance.
- Photographs are taken of all non-complying items.
- Recordkeeping compliance is assessed through providing records within 5 days of the Follow Up review.

The 4-Step Retail Review

(1) Opening Meeting:

- Reviewers will conduct a short meeting with the responsible authority.
- Explain the scope and objective of the review.
- Provide a short summary of what they will be looking for by providing a copy of the Information Sheet.
- Store representatives are encouraged to accompany the Reviewer during the review.

	Agricultural Marketing Service	Country of Origin Labeling Division	1400 Independence Avenue, SW. Room 2620-S, STOP 0216 Washington, DC 20250-0216	Information Form April 10, 2014
Mandatory Country of Origin Labeling (COOL) - Final Rule				
Date of Review	8/3/2015	Store Name	ABC Retailer	
Reviewer's Name	John Doe	Store Address	1 Main Street	
File Name	UT 15 F2344A	City, State Zip	Salt Lake, Utah 84103	
COOL Website	www.ams.usda.gov/cool	COOL E-mail Address	COOLAudit@ams.usda.gov	
COOL Retail Surveillance Information Form				
Summary				
<p>The 2002 and 2008 Farm Bill amended the Agricultural Marketing Act of 1946 (Act) to require designated retailers to notify their customers of the country(ies) of origin and method(s) of production (wild or farm raised as applicable) 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. Covered commodities are exempt from COOL requirements if they are an ingredient in a processed food item. Retailers determined to be in violation of the Act must be notified of the violation and provided with a 30-day period during which they may take the necessary steps to comply. If upon completion of the 30-day period it is determined that the retailer has willfully violated the Act, the retailer may be fined up to \$1,000 for</p>				




What's NEW with COOL? Amended Final Rule

On May 24, 2013 the amended 7 CFR Part 60 and 65 Mandatory COOL Final Rule was published. This final rule changes the labeling provisions for muscle cut covered commodities of Beef/Veal, Pork, Lamb, Goat, and Chicken 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).

Country of Origin Notification for Muscle Cuts

Under the new final rule, country of origin designation for muscle cut covered commodities are required to include the production steps (i.e., Born, Raised, and Slaughtered) from which the meat is derived. Muscle cut covered commodities produced or packaged before May 24, 2013 are not required to include production steps. The term "commingling" refers to the allowance provided in the 2009 COOL Regulation for industry to affix one label to two or more origins of meat if the origins are processed on the same production day. The May 2013 final rule removed the allowance for commingling.

The 4-Step Retail Review

(2) Conducting the Review:

The Reviewer will review all covered commodities:

- **Produce Department** (fresh and frozen fruits and vegetables; ginseng)
- **Baking Aisle** (nuts: raw peanuts, pecans, macadamia nuts)
- **Meat Department** (fresh and frozen beef, veal, pork, lamb, goat, chicken)
- **Seafood Department** (fresh and frozen fish and shellfish)
- Full-service counters
- Frozen items display cases
- Self-service areas, sale counters, and promotional displays

The 4-Step Retail Review

(3) Recordkeeping:

- During **initial reviews**, Reviewers will interview the store representative to assess recordkeeping compliance.

Q1: What types of records used in the normal course of business are received from suppliers that you rely on to create your own labels, such as signs, placards, and scale printers?

Q2: Where are records maintained?

Q3: How long are records maintained?

Q4: As the responsible store authority, please briefly explain your knowledge of COOL requirements and your systems to ensure compliance.

Q5: Would you be interested in receiving additional outreach materials and guidance from USDA's COOL program to assist your staff and consumers?

The 4-Step Retail Review

(3) Recordkeeping:

- During **follow up reviews**, Reviewers will request records for up to 5 covered commodities to assess recordkeeping compliance.
 - For **Pre-labeled items**, retailers must provide:
 - A record that verifies the retailer's immediate previous supplier (name, city, and state).
 - The retailer's immediate previous supplier is the company that delivered the covered commodity to the store.
 - The record is not required to have the country of origin or method of production because that is printed on the pre-labeled item.

The 4-Step Retail Review

(3) Recordkeeping:

- During **follow up reviews**, Reviewers will request records for up to 5 covered commodities from various categories to assess recordkeeping compliance.
 - For items that are **NOT Pre-labeled**, retailer must provide:
 - A record that verifies the country of origin, method of production (if applicable), AND retailer's immediate previous supplier (name, city, and state).
 - Retailers may provide multiple records to verify country of origin, method of production, and immediate previous supplier.

The 4-Step Retail Review

(3) Recordkeeping:

- All records must be submitted directly to the Reviewer.
(Do not submit records to USDA.)
- Information obtained for recordkeeping items will be used to initiate Supplier Traceback Audits which verify accuracy of COOL through the chain of commerce.

The 4-Step Retail Review

(4) Closing Meeting:

- The Reviewer will provide the Store Representative a copy of the completed Checklist.
- The Reviewer will discuss the results of the review and any findings identified.
- Inform the Responsible Authority that Findings are not official until reviewed by USDA.

The 4-Step Retail Review

(4) Closing Meeting:

- If the store received 4 or more non-compliance codes, they will receive official notification from USDA requiring a response with corrective actions and preventative measures.
- The Reviewer will verify name of Responsible Authority, email address, mailing address, and phone number.

The 4-Step Retail Review

(4) Closing Meeting:

- The Reviewer will provide their contact information should there be questions after the review.
- The Reviewer will provide a Records Request Form in case of pending records requests.

Country of Origin Labeling Retail Surveillance Activities Recordkeeping Responsibilities	
Please provide records for each of the items marked. Records must contain country of origin (unless item is pre-labeled), method of production (for fish and shellfish items only), and your supplier's name and location (minimum of city and state).	
A	Fresh Fruit
B	Frozen Fruit
C	Peanuts
D	Pecans
E	Macadamia Nuts
F	Ginseng
G	Fresh Vegetables
H	Frozen Vegetables
I	Fresh Fish
J	Frozen Fish
K	Fresh Shellfish
L	Frozen Shellfish
M	Beef Muscle Cuts
N	Ground Beef
O	Veal, Muscle Cuts or Ground
P	Pork Muscle Cuts
Q	Ground Pork
R	Chicken Muscle Cuts
S	Ground Chicken
T	Goat, Muscle Cuts or Ground
U	Lamb, Muscle Cuts or Ground
Records not available the day of inspection must be provided within 5 business days.	
File Name:	
Due Date:	
Reviewer's Name:	
Fax Number:	
E-mail Address:	

Compliance

- Retail Review Compliance Rating Scale - The COOL Division notifies each retail store in writing where there are findings of non-compliance.
- 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

- Non-compliance notices are not sent to retailers with an Adequate compliance rating.
- Non-compliance notices are sent to store locations (by email or by overnight carrier) to address Compliance Deficiencies and Critical Weaknesses.

Compliance

➤ **Responding to Non-Compliance Notices**

- Retailers are required to correct non-compliances within 30 days.
- Retailers must submit a written response to the non-compliance notice describing corrective actions and preventative measures for all findings.
- Responses to non-compliance notices must be submitted to USDA within 30 days of receipt of the notice.

2014 Retail Compliance

Table 1

**2014 Retail Compliance by Commodity
Small/Independent Stores**

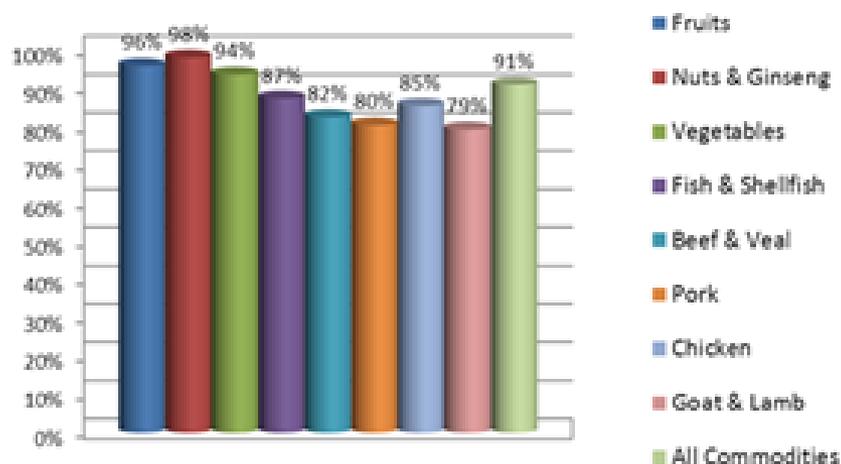
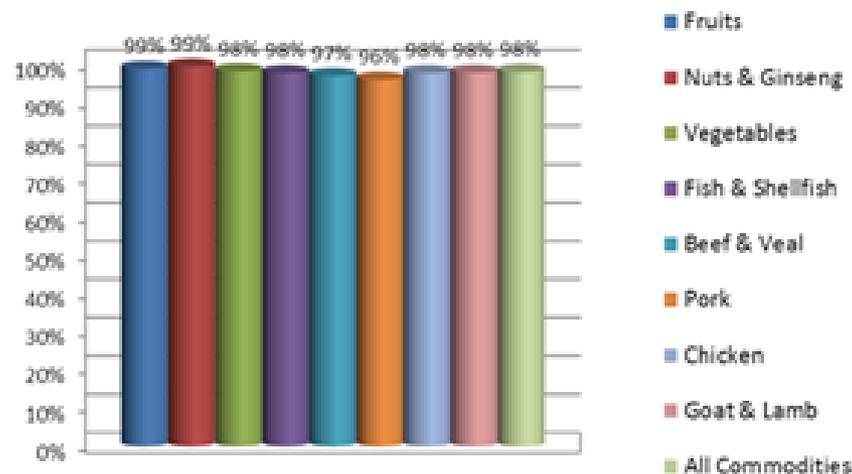


Table 2

**2014 Retail Compliance by Commodity
Large Chain Stores**



- Table 1: During FY2014, COOL retail surveillance activities were targeted in small and independently owned retail stores, a segment of the industry with weaker compliance trends.
- Table 2: Large chain stores have higher compliance in comparison to small and independently owned retailers.

2014 Retail Compliance

Table 3

2014 COOL Nationwide Compliance by Rating

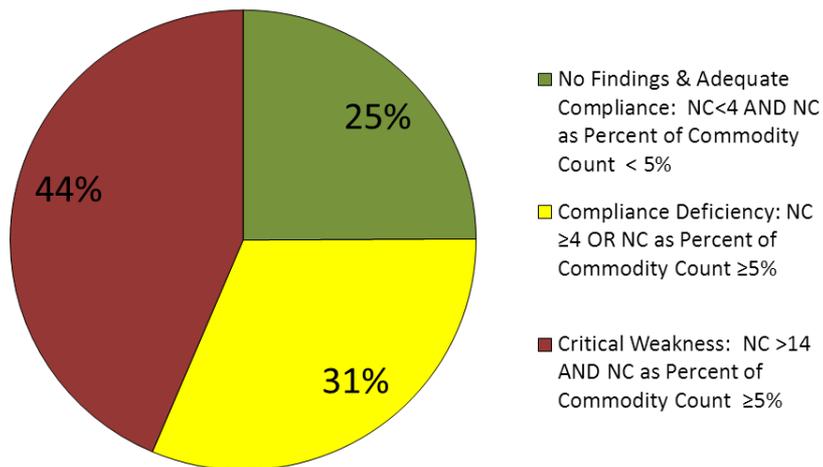
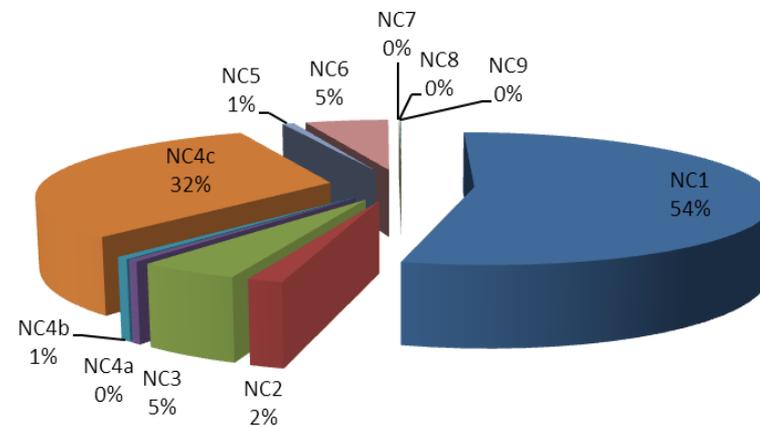


Table 4

2014 Retail Reviews: Non-Compliance by Code



- Table 3: Due to the high number of retailers with a critical weakness compliance rating in 2014, a large number of follow up reviews were conducted at these stores in 2015.
- Table 4: Over half of 2014 non-compliances was due to no COOL at the point of sale. The second most prevalent finding, 32%, was due to animal production step labeling issues on meat muscle cuts.

FY 2016 Enforcement Activities

- Continue to enforce mandatory labeling requirements on all covered commodities.
- Initial and Follow Up retail reviews in traditional retail stores, (after the holidays), and after state cooperators are trained and certified.
- Conduct outreach for non-traditional retailers (PACA-licensed online sales & convenience stores) and consumers.
- Implement enforcement strategy for remote retailers and convenience stores subject to PACA licensing.
- Possible rulemaking activities should Congress change the statute for meat covered commodities.

Resources

Email for General Questions: cool@ams.usda.gov

Email for Retail Review Questions: coolaudit@ams.usda.gov

Phone: **(202) 720-4486** Fax: (202) 354-5062

Website: <http://www.ams.usda.gov/rules-regulations/cool>

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