

Produce Industry Webcast

Complying with COOL Regulations

Friday, August 8, 2008

11:00 am – 12:30 pm EST

Welcome!!!

- **Welcome** – Mike Stuart, Florida Fruit and Vegetable Association
- **How we got here** – Robert Guenther, United Fresh Produce Association
- **Understanding the new Regulation** – Lloyd Day, Administrator, USDA Agricultural Marketing Service
 - Accompanied by Bob Keeney, Deputy Administrator and Bruce Summers, Associate Deputy Administrator
- **Questions & Discussion**

Produce Association Co-Host

Thank You!!!

**American Mushroom Institute
CA Grape & Tree Fruit League
FL Citrus Packers
FL Tomato Exchange
National Potato Council
Northwest Horticultural Council
U.S. Apple Association**

**CA Citrus Mutual
CA Strawberry Commission
FL Fruit and Vegetable Assn
ID Grower Shipper Ass
National Watermelon Assn
Texas Produce Association
United Fresh Produce Assn**

**Fresh Produce Assn of the Americas
GA Fruit and Vegetable Growers Assn
Grower-Shipper Assn of Central CA**

Produce COOL – How we got here

Robert Guenther
Senior Vice President, Public Policy
United Fresh Produce Association

Produce COOL – How we got here

■ **Legislative Roadmap**

- 2002 Farm Bill – Underlying Law for COOL
- 2004 Consolidated Appropriation Act – Delayed implementation for produce until September 30, 2006
- FY 2006 Agriculture Appropriation Law – Delayed implementation for produce until September 30, 2008
- 2008 Farm Bill – Fundamental Changes to 2002 Law

Produce COOL – How we got here

■ **Regulatory Road Map** (major action)

- October 11, 2002 – Interim Voluntary Guidelines published by USDA
- October 30, 2003 – USDA publishes Proposed Rule for Mandatory COOL program
- October 5, 2004 – USDA published interim final rule for fish and shellfish
- August 1, 2008 – USDA publishes interim final rule for produce and other covered commodities

Produce COOL – How we got here

■ 2002 Farm Bill

- *Requires retailers to notify their customers of the origin of covered commodities*
- Basic tenet of the law!!!

Produce COOL – How we got here

■ **2008 Farm Bill (P.L. 110-246)**

– Key Changes to COOL law

- USDA barred from requiring new record keeping procedures
- State, commodity specific, and regional labeling meet COOL standards
- Retail liability based on “good faith effort” standard
- 30-day compliance window for retailers and suppliers and fines limited to \$1,000 per violation
- Retailers not liable for misinformation provided by suppliers

Produce COOL – How we got here

■ **Additional COOL Resources**

- Produce Associations: Websites, newsletters, staff contacts
- United Fresh COOL White Paper (Third Edition):
www.unitedfresh.org
- USDA COOL Website:
www.ams.usda.gov/COOL
- Additional Industry Education Sessions Planned

Produce Industry COOL

Lloyd Day, Administrator
U.S. Department of Agriculture
Agricultural Marketing Service

COOL

Country Of Origin Labeling



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Legislation and Related Activities

2002

- 2002 Farm Bill – Enacted Mandatory COOL

2004

- IFR published for Fish & Shellfish Only: 7CFR Part 60
- Implementation for all other commodities delayed until 9/30/08

2008

- 2008 Farm Bill Amended COOL provisions
- IFR published for remaining covered commodities: 7CFR Part 65
- September 30, 2008 – Implementation Date for All Remaining Covered Commodities



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COOL Regulations

- **7 CFR Part 60 – Fish and Shellfish Only**

- Published October 5, 2004
- Effective April 5, 2005

- **7 CFR Part 65 – All Other Covered Commodities**

- Published August 1, 2008



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Implementation

- IFR for remaining covered commodities effective September 30, 2008 .
- Requirements do not apply to covered commodities produced or packaged before September 30, 2008.
- During the six month period following the effective date of the regulation, AMS will focus its resources on education and outreach.



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Components of IFR

- Who must label
- What must be labeled
- Determining origin
- Recordkeeping
- Compliance and enforcement



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Who Must Label?

Retailers

- A retailer is defined as any person licensed as a retailer under the Perishable Agricultural Commodities Act.
- The PACA definition of a retailer includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least \$230,000 annually.
- There are currently approximately 4,000 active licensees (36,000 stores).



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Exemptions

- **The law exempts food service establishments, including those within retail establishments**
 - Restaurants, Cafeterias, Lunch Rooms, Food Stands, Bars, Salad Bars, Delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods.



Covered Commodities

Muscle Cuts of Beef, Lamb, Chicken, Goat, and Pork

Ground Beef, Ground Lamb, Ground Chicken, Ground Goat, and Ground Pork

Fish and Shellfish (wild and farm-raised)

Perishable Agricultural Commodities (fresh & frozen fruits and vegetables)

Peanuts, Pecans, and Macadamia Nuts

Ginseng



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Exclusions

- Items are excluded from labeling when a covered commodity is an ingredient in a **processed** food item.



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Processed Food Item

A retail item derived from a covered commodity that has undergone specific processing resulting in a **change in the character** of the covered commodity, or has been **combined with at least one other covered commodity** or other substantive food component (e.g., chocolate covered strawberries and breaded zucchini slices).



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Processed Food Item

Specific processing that results in the **change of character** of the covered commodity includes:

1. Cooking (frying, broiling, grilling, boiling, steaming, baking, roasting)
2. Curing (salt curing, sugar curing, drying)
3. Smoking (hot or cold)
4. Restructuring (emulsifying and extruding)



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Processed Food Item

Processed Food Items are *NOT* Covered Commodities

Examples of Processed Food Items:

- Breaded okra
- Salad mix that contains lettuce and carrots and/or salad dressing
- Frozen peas and carrots
- Fruit cup that contains melons, bananas, and strawberries



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U.S. Country of Origin

For fresh and frozen **fruits** and **vegetables**, peanuts, pecans, macadamia nuts, and ginseng, the product must be grown in the United States.



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U.S. Country of Origin

Covered commodities further processed or handled in a foreign country after meeting the requirements to be labeled as “U.S. origin” may bear a declaration that identifies the U.S. as the sole country of origin as long as identity of the product is maintained along with necessary records.

(e.g., carrots exported to Mexico to be peeled and sliced)



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Origin of Imported Covered Commodities

Imported covered commodities for which origin has already been established by this law (e.g., grown) and for which no production steps occur in the U.S. retain the origin as declared to U.S. Customs and Border Protection.

(e.g., Chilean grapes)



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Labeling Commingled Covered Commodities

- Single type of covered commodity presented for retail sale in a consumer-ready package from more than one origin.

(e.g., bag of frozen peas from three countries)

- In general, commingled covered commodities should be labeled in accordance with existing Customs and Border Protection marking regulations (19 CFR part 134).



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Notification

■ Remotely Purchased Products

Retailer may provide the country of origin on the sales vehicle or at the time the product is delivered.

- Internet Sales
- Home Delivery Sales



Notification / Markings

- Legible
- Conspicuous Location
- Acceptable Abbreviations
- Symbols and Flags Alone NOT Acceptable



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Markings - §65.400

Country of origin declarations can be made on...

- Placard
- Label
- Band
- Pin Tag
- Sign
- Sticker
- Twist Tie
- Or Other Display

Bulk containers may contain covered commodities from multiple origins and must be labeled accordingly.



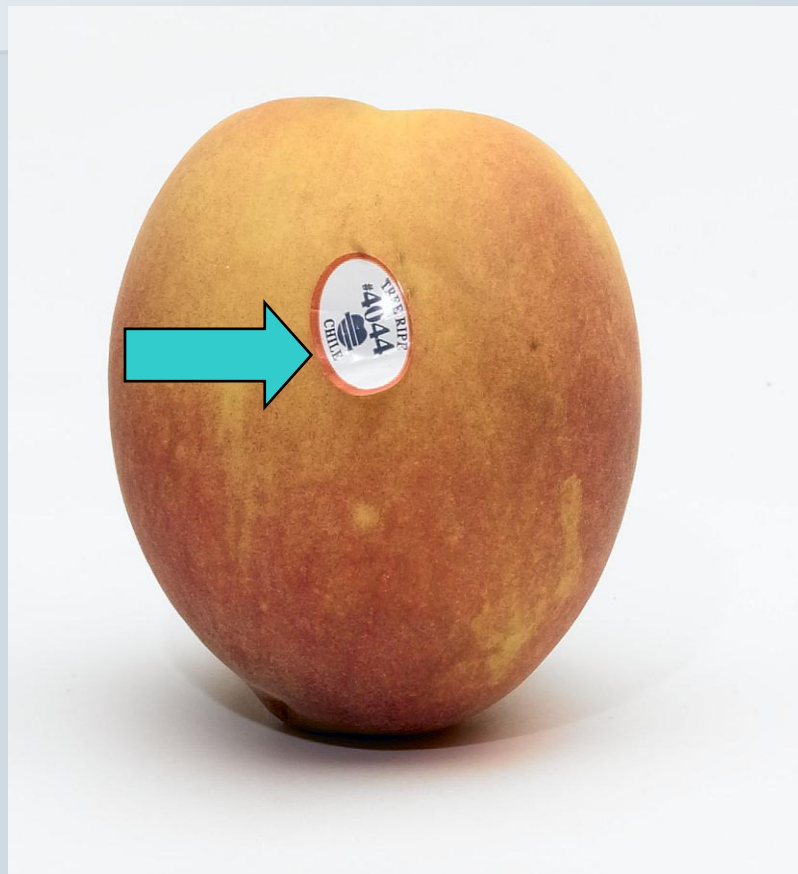
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Notification / Markings



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Markings - \$65.400



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Markings - \$65.400

Acceptable Declarations for Country of Origin

- “Product of the USA”
- “Produce of the USA”
- “Grown in Mexico”
- “California...” (State , Regional, Locality designations OK for everything except meats, fish, and shellfish)
- “U.S.”
- “Canada”
- “  China”



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Markings - \$65.400

State, Region, and Locality Labeling

■ Examples

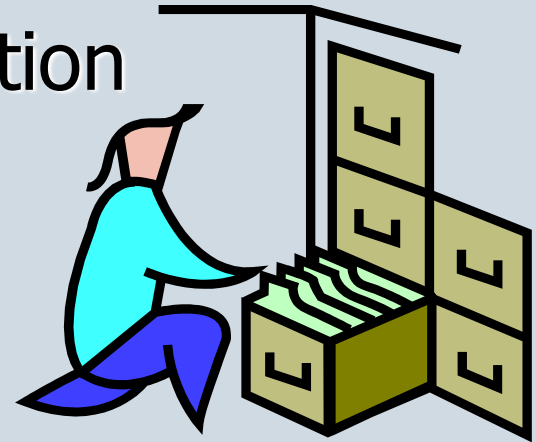
- Washington State Apples
- Idaho Potatoes
- California Grown
- Northwest Cherries
- Tampico Onions



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Recordkeeping Requirements - §65.500

- Records must be legible
- Maintained either electronic or hard copy format
- Various forms of documents acceptable
- May be maintained in any location



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Recordkeeping Requirements - §65.500

Retailers and suppliers must provide records maintained in the normal course of business that verify an origin claim within 5 business days of a request by USDA representatives.



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Recordkeeping Requirements - §65.500

- *Any person* engaged in the business of supplying a covered commodity to a retailer, directly or indirectly, must make information available to the buyer about the country(ies) or origin of the covered commodity.
- Information can be provided on the product, master shipping container, or in a document that accompanies the product through retail sale.



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Recordkeeping for **RETAILERS**

- For covered commodities sold in pre-labeled consumer-ready packages the label itself is sufficient evidence of COO as long as labeled by the identified firm making the claim.
- For covered commodities that are not pre-labeled, records must identify covered commodity, the retail supplier, and country of origin.



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Recordkeeping for **RETAILERS**

- For products pre-labeled with origin information on the shipping container, retailers must either maintain pre-labeled container at retail store for as long as product is on hand, or ensure origin is included in record identifying covered commodity and retail supplier.



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Recordkeeping for **SUPPLIERS**

- “Suppliers” includes but not limited to growers, distributors, handlers, packers, and processors.
- Suppliers initiating claims must possess or have legal access to records necessary to substantiate claims.
- Suppliers must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity for 1 year from the date of the transaction.



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Retail Surveillance Activities

- Cooperative Agreements
- Retail Reviews
- Supplier Audits



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Cooperative Agreements

- Official partnership established between USDA and State Agencies to assist with COOL Retail Surveillance responsibilities.
- Multi-year agreement; contingent upon the availability of funds.



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2007 Retail Reviews

- 1,657 retail stores out of 1,662 assigned were audited in 2007 (99.7%).
- 540 (32.6%) audits showed violations of Country of Origin Labeling requirements.
- Within the 540 audits where violations occurred, there were 1101 violations cited. This is an average of 2 violations per audit conducted.



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Supplier Audits

- Conducted by USDA auditors
- 2% of Retail Reviews are selected for traceback audits
- Country of Origin declarations are traced back through all suppliers in the chain of custody
- FY 2006 – 17 items audited; 69 suppliers; 4 non-conformances



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Enforcement

- Only USDA can initiate enforcement actions
- Non-conformance with COOL regulations
- 30 day period allowed for violators to comply with regulations
- Civil penalties of up to \$1,000 per violation for all covered commodities
- Any mislabeling of country of origin is also in violation of PACA misbranding provisions



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Additional Information

Visit

<http://www.ams.usda.gov/cool>



To Provide Comments:
<http://www.regulations.gov>



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Questions?

Contacts:

Agricultural Marketing Service

cool@usda.gov



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Understanding the New COOL Regulation

Questions & Discussion

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THANK YOU