DATE: April 4, 2003

TO: Country of Origin Labeling Program
Agricultural Marketing Service, USDA, Stop 0249, Room 2092-S
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FR: Tom Lovelace
CEO
Fresh Express
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RE: [Docket Number LS-02-13] Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946.

Fresh Express respectfully submits the following comments regarding the country of origin labeling requirements as they relate to the fresh fruit and vegetables industry.

If you have any questions or would like to discuss submitted Fresh Express comment further, please feel free to contact me at (817) 849-3421.

Very truly yours,

Tom Lovelace
Chairman & Chief Executive Officer

**Relevant Background**

Fresh Express is the share leader of the value-added ready-to-eat fresh salad category and operates in both the retail and foodservice segments. In all, Fresh Express offers retail and foodservice customers over 500 separate food items processed and distributed from eight strategically located facilities in the United States and providing jobs to more than 4,000 employees. Fresh Express pioneered the packaged salad category at retail and continues to lead the industry in technological, product and food safety programs and innovations.

As our core mission, Fresh Express strives to provide consumers and customers with the highest quality, freshest and safest products possible in the marketplace.

Overall Recommendation

With respect to country of origin regulations, the fresh-cut fruit and vegetable industry is already subject to U.S. FDA and U.S. Customs Service regulations. Overall, we strongly recommend that any USDA COOL guidelines and future regulations be revised and harmonized to conform to these already-established requirements thereby eliminating redundancies, conflicts, confusion and unnecessary costs that must be borne by consumers.

**Specific Comments and Recommendations**

**1. The labeling requirements set forth in the USDA Guidelines for the fresh produce industry are already covered under the U.S. Customs regulations and therefore are unnecessary, unreasonable, confusing and in conflict.**

a) The purpose of the new COOL rules is to expand the country of origin requirement to commodities and products that are not currently required to label the country of origin.

The fresh fruit and vegetable industry is already operating under FDA and U.S. Customs regulations with respect to country of origin labeling; these federal requirements provide sufficient notice to the ultimate purchaser relating to the country of origin of the product.

**Recommendation**. We urge USDA to harmonize its guidelines with the FDA and U.S. Customs country of origin labeling requirements already in place.

b.) Labeling requirements under the new guidelines are impractical, cumbersome and confusing. It is not practical to list the country of origin for each raw product by order of prominence by weight and to additionally label the country of origin where each product was grown, harvested, packed, and/or processed.

Example: In products featuring multiple items, the USDA COOL requirements as currently set forth are both too cumbersome and impractical to list on the package. To illustrate further, one of the Fresh Express products is a small, single serve 5 oz. cup with extremely limited label space yet containing multiple fruit items.

The existing FDA and U.S. Customs labeling practices for packaged fresh fruits and vegetables, including the example given provide for country of origin disclosure and have already proved to be sufficient, accepted and recognized by the consumer. Due to rapidly changing growing areas for raw product components, the enactment of the proposed Country of Origin Labeling rules would create an unreasonable burden on

processors to maintain a multitude of labels to address even minor changes in components. The process would unnecessarily raise costs to consumers without providing incremental benefits when compared to current disclosure requirements.

**Recommendation**. We urge the removal of any reference to labeling the countries in order of predominance and instead urge implementation of requirements consistent with those provided under current U.S. Customs regulations.

c.) The requirements under the USDA COOL Guidelines may be in conflict with or duplicate already existing federal regulations, causing implementation confusion and error.

USDA COOL Guidelines exempt foodservice from the regulations; however, packaged fresh fruit and vegetables delivered to the foodservice segment are covered under U.S. Customs requirements. It is therefore vague and unclear as to what is required of processors in relationship to labeling foodservice products. This variance may cause confusion as to whether USDA requirements apply -- where the country of origin is marked on the container – or whether already existing U.S. Customs marking is sufficient.

Example: FDA requires labeling to contain the name and address of the producer or distributor; the country listed on the address is also used to identify the country of origin for the product. Currently, the address on the label is sufficient so as to not require the same country to be listed as a foreign country. Under the USDA COOL Guidelines, however, the country would need to be listed twice in order to conform to all required regulations.

**Recommendation**. We urge that current labeling laws and U.S. Customs regulations be incorporated in the USDA COOL Guidelines and used as the standard in the labeling of perishable commodities to prevent conflicting or confusing country of origin labeling requirements.

**2. The recordkeeping requirements set forth by existing regulation for the fresh produce industry are sufficient and already provide appropriate information for traceback purposes.**

a.) USDA COOL Guidelines require retailers to maintain records showing countries of origin, and, for domestically produced and/or processed products, to have ready access to records that identify the location of the growers and production facilities.

However, the fresh fruit and vegetable industry has already implemented stringent requirements as they relate to recordkeeping of raw products. In particular, under the PACA statutes and state regulations, certain records such as bills of ladings, manifests, or delivery tags showing the grower's name, location, crop delivered, and other relevant information must be maintained and readily available for a two (2) year period by the producer, processor, or supplier. Bills of lading containing sufficient information for traceback from the retailer to its supplier are provided to the retailer. In addition, country of origin information is already printed on labels. These practices are sufficient for traceback requirements.

Already established produce tracking and recall procedures by producers, processors, distributors, and suppliers are widely recognized and praised as standard requirements in the produce industry. While the USDA COOL Guidelines would impose requirements *directly* on the retailer, in actuality they impact the grower, processor, distributor and supplier to provide different and additional records to retailers.

**Recommendation**. We recommend that this requirement be eliminated based upon the well-established fact that the industry already verifies the country of origin and the retailer is already provided with sufficient country of origin and traceback information. It is our respectful view that this requirement is not necessary and places a redundant burden and unreasonable cost on both the industry and the retailer.

**3. Delete any reference to self-certification.**

a.) The language excluding self-certification of records is vague and ambiguous. It infers that certification is required.

Under federal and state legislative and regulatory requirements, the fresh fruit and vegetable industry is already highly regulated relating to auditable recordkeeping and retailers are already provided with adequate and appropriate country of origin information for traceback.

**Recommendation**. We urge that any reference to certification requirements be removed.

**4. The provision of the USDA COOL Guidelines providing that retailers and the Department conduct audits of producers, processors, distributors and suppliers records is disruptive and unnecessary.**

a.) Audits of producers, processors, distributors, and suppliers by retailers are onerous and unnecessary. This requirement could be broadly construed rather than limited to country of origin or grower locations, thereby potentially subjecting the producer, processor, distributor or supplier to a multitude of retailer audits of their operations or recordkeeping. Such a requirement could infringe on trade secrets or proprietary practices and cause undue burden and disruption to the business operations of the producer, processor, distributor or supplier. The increased activity at processor locations by non-employees also creates additional security risks that must be managed by processor firms. These costs are ultimately borne by consumers. Frankly, processors need less non-employee visitors, not more, as facility security is a greater consideration than ever before.

**Recommendation.** We urge USDA to remove this provision from the Guidelines. As a standard industrywide practice, retailers are already assured the provision of adequate and effective traceback procedures.