Merchants Distributors, Inc.

April 9, 2003

The Honorable Ann Veneman
Secretary, U.S. Department of Agriculture
Country of Origin Labeling Program
Agricultural Marketing Service
Stop 0249 Room 2092-S
1400 Independence Avenue, SW
Washington, DC 20250-0249

Re: Comments on Guidelines for Voluntary Country of Origin Labeling Program

Dear Secretary Veneman:

On behalf of Merchants Distributors Inc, we are pleased to respond to your request for comments on the U.S. Department of Agriculture's (USDA's) "Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts" (hereinafter Voluntary COL Guidelines). MDI is a regional wholesale food distributor servicing 600 plus stores in eight states, and offers over 30,000 items.

MDI has a long history of supporting voluntary country of origin labeling programs. For example, Idaho potatoes, California citrus, Florida citrus, California vegetables, Washington apples, New Zealand apples, and Chilean grapes are examples of supporting voluntary country of origin labeling programs. In 21 years of produce experience, I have had zero inquiries on country of origin by a consumer.

We definitely want to comply with workable guidelines. We will be concerned with the cost incurred due to labeling, record keeping and retail signage as presently prescribed.

Although we appreciate your efforts in fulfilling the Congressional mandate to provide Voluntary COL Guidelines, we do not believe that they represent a workable system, particularly now when the information that they require us to provide to consumers is not available for significant covered commodities and USDA stated that "when retailers . . . choose to adopt the guidelines that all of the provisions contained within must be followed."

As you develop the proposed and final regulations, we urge you to consider the following issues:

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- Clear recognition of overall food chain responsibilities:

The law requires retailers to provide consumers with information that retailers can only obtain from their suppliers. Given this fact, the law also holds suppliers accountable for providing information to retailers.

USDA's Voluntary COL Guidelines properly recognize that the entire food chain must bear responsibility for a country of origin labeling program if consumers are to receive accurate country of origin information as Congress defined it. In furtherance of this principle, the Voluntary COL Guidelines state that producers, growers, handlers, packers, processors and importers must maintain auditable records documenting the origin of covered commodities and that these persons must make country of origin information available to retailers. USDA's regulations must also recognize the obligations that these parties share and must further hold them accountable through stringent enforcement measures to ensure that retailers have accurate information to provide to consumers.

- Flexible Methods of Country of Origin Notification:

The statute allows country of origin information to be provided by means of 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." The Guidelines generally follow the statute and further provide that the information must be "conspicuous," and either typed, printed or handwritten.

We urge the Secretary to maintain flexibility regarding the ways in which we satisfy our statutory obligation to inform consumers of the country of origin of covered commodities. Furthermore, USDA should expressly recognize that country of origin information can be considered "conspicuous" even if it is a label placed on the back of a random weight package. The country of origin declaration for hamburger as explained in the Voluntary COL Guidelines could cover a substantial amount of the product if it was required to appear on the front of the package with all of the other federally mandated labeling. (Some counties limit the amount of package surface that may be covered to avoid concealing products from consumers.) Accordingly, provided that the information is presented to consumers in a manner in which they can readily find it, the information should be considered conspicuous and our obligation met. Indeed, since the statute can be satisfied by providing a sign at the store, to the extent that the information is affixed any where on the package, it will be available to the consumer for a greater period of time.

- Reasonable recordkeeping:

The Voluntary COL Guidelines require every person engaged in the business of supplying a covered commodity for retail sale to keep records on the country of origin of

the covered commodity for two years. Basic records must be kept at store level; contracts and other more detailed records may be kept at warehouses or corporate headquarters.

Retailers should not be required to keep two years worth of records for covered commodities. Most covered commodities will be sold and consumed well before two years has elapsed, thus retaining records for this period of time at the retail level will serve no useful purpose while incurring substantial cost.

Records required should be reasonable. Retailers have no control over the country of origin determination, which must be made well before the food product reaches the retail grocer's control. Accordingly, the records retailers are required to keep must only connect the covered commodity to those who made the country of origin determination.

- Recognition of food service aspects of grocery stores:

In keeping with the current state of the industry, MDI serviced stores include a variety of options for satisfying consumer demands. In addition to the customary grocery sections, such as produce, meat and general grocery, MDI customers offers consumers prepared foods at delis, salad bars, through catering, and other venues.

The Guidelines state that the term "food service establishment" includes salad bars, delis and other prepared food enterprises that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises. We urge USDA to continue to recognize that foods provided from these venues within the retail store are properly considered subject to the statute's exemption from country of origin labeling for food service establishments. Trays of cut vegetables from our catering operations, fruit salad sold at delis or throughout the store, and foods provided at our salad bars are all prepared at food service.

Accordingly, for purposes of remote sales, retailers should be allowed to satisfy their obligation to inform consumers of the country of origin of covered commodities by providing information to the consumer at the time the food is delivered to the consumer.

- Reasonable enforcement standards:

Retailers are subject to penalties of up to $10,000 per "willful" violation of the statute. USDA's regulations should recognize this standard in two important respects.

First, USDA should recognize that if the majority of individual covered commodity items bear a label indicating the product's country of origin, the retailer has met the statute's requirement to inform the consumer of the country of origin of that covered commodity. For example, one efficient way to ensure that consumers receive accurate country of origin information on some covered commodities, such as produce, is for suppliers to sticker the individual items with country of origin information. However,

given the nature of some items as well as adhesive efficacy, not all covered commodities will be stickered.

For example, suppliers currently apply one or two stickers to a hand of bananas that may be comprised of six or seven individual bananas. Consumers frequently separate individual bananas from the "hands" in which they were shipped so that not all hands will be labeled throughout the display, even if the supplier labeled each hand when they were shipped. Similarly, although the technology for label adhesives has improved, no label adhesive is effective 100% of the time. Therefore, USDA should recognize that, if the majority of covered commodity items on display bears country of origin labels, the retailer has met its obligation to inform the consumer of the country of origin of the covered commodity and has not willfully violated the statute, even if some covered commodities in the display do not bear a label.

Second, USDA should expressly recognize in the regulations and the preamble some circumstances under which retailers will not be considered to have violated the statute willfully. For example, USDA should state that the Agency will not conclude that a retailer has willfully violated the statute for providing inaccurate country of origin information for a covered commodity if the retailer has the results of an audit that the covered commodity supplier obtained from USDA (under the voluntary, user fee-based program proposed in the Voluntary COL Guidelines) or another third party that demonstrates that the supplier has a system for determining country of origin upon which the retailer may reasonably rely.

- Prompt issuance of regulations:

Finally, we urge you to conduct the rulemaking promptly and efficiently. Section 285 of the statute states that the provision "shall apply to the retail sale of a covered commodity beginning September 30, 2004." Since we are required to set up significant systems to obtain the necessary information from our suppliers, to provide the information to consumers, and then to retain the information, we must know what those systems must accommodate as quickly as possible.

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We appreciate your attention to our concerns and urge you to develop the regulations as expeditiously as possible.

Sincerely,

Michael Burris
Director of Produce
Merchants Distributors, Inc.