



May 20, 2011

*Submitted Electronically*

The Honorable Tom Vilsack  
Secretary of Agriculture  
United States Department of Agriculture  
Jamie L. Whitten Federal Building  
1400 Independence Avenue, SW  
Room 200-A  
Washington, DC 20250

**RE: Reducing Regulatory Burden; Retrospective Review Under Executive Order 13563, 76 Fed. Reg. 22058 (April 20, 2011)**

Dear Secretary Vilsack:

The Food Marketing Institute (FMI)<sup>1</sup> appreciates the opportunity to respond to the Department of Agriculture's (USDA) request for comments on Reducing Regulatory Burden; Retrospective Review Under Executive Order 13563. We applaud USDA for seeking ways to reduce the burdens of existing rules.

We will focus on two rules in these comments: Mandatory Country of Origin Labeling (COOL)<sup>2</sup> and Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products.<sup>3</sup> We also touch on burdens associated with the proliferation of state of origin labeling laws.

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<sup>1</sup> FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's members in the United States operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries.

<sup>2</sup> 74 Fed. Reg. 2658 (January 15, 2009).

<sup>3</sup> 75 Fed. Reg. 82148 (December 29, 2010).

### **Country of Origin Labeling**

FMI members<sup>4</sup> take very seriously their obligations under the COOL law and industry compliance rates are 97 percent. FMI appreciated how the Agricultural Marketing Service (AMS) considered our input in the implementation of COOL and we have very much valued all of the help AMS staff has given us in answering compliance questions since. However, we have concerns that the inspection process has become unnecessarily burdensome. We wish to share some of the issues the industry has encountered in the COOL inspection process and provide suggestions on how to make the process more efficient and effective. FMI stands committed to working with AMS to achieve this goal.

Some of the areas we believe should be addressed by AMS are:

**Duration and Frequency of Inspections:** COOL reviewers may spend many hours looking for violations which consumes significant employee time and disrupts store operations. One retailer estimated that each COOL inspection used 4.25-5.25 hours of staff time. Some retailers have been required to dedicate thousand of hours of staff time this year to dealing with COOL inspections. Certain retail outlets have been inspected multiple times in a period of weeks or months. In some circumstances, these inspections have been conducted by the same authorities, in other circumstances, different authorities. FMI is aware of one retailer who had a particular store inspected three times over a span of 10 weeks. FMI believes that inspections should be no longer than absolutely necessary and that a particular retail outlet should not be subject to repeated inspections over the course of the same year. This is unnecessarily disruptive to store operations and is not an effective way of assessing industry compliance. AMS should make a strong effort to coordinate inspections among different authorities to prevent these types of recurring inspections from happening. Additionally there are concerns that more inspections have been occurring at the beginning of the year which has made it hard to benchmark performance throughout the year.

**Insufficient Training of Reviewers:** The industry is still encountering reviewers who are not sufficiently familiar with the details of the law to properly conduct an inspection. For example, in several inspections of our members, reviewers improperly cited violations for produce labeled with the state of origin rather than the country of origin. This labeling is COOL compliant pursuant to 7 C.F.R. § 65.400(f). FMI believes it is essential for all reviewers to be completely familiar with the various ways retailers can comply with COOL. Furthermore, AMS policy directs reviewers to provide retailers with the COOL checklist detailing violations. Reviewers do not always comply

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with this policy which makes it harder for retailers to correct violations. Inspections should be conducted in a consistent and proper manner.

**Violation Letters:** The industry has a number of concerns relating to violation letters. First, they should contain more specific information regarding the items in violation. Having UPC information would help retailers better identify if there is a recurring problem with a particular item. Also, retailers sometimes do not receive letters until many months after an inspection. When letters are received this late, it is difficult to address the specific violations as the product may be long gone from the store. FMI encourages AMS to send these letters in a timelier manner. When a retailer sends a letter to AMS outlining the steps they have taken to correct COOL violations, a timely confirmation from the agency would be helpful. FMI would like to know if AMS has developed a database to increase the efficiency of receiving and replying to response letters. Letters should be addressed to corporate offices rather than individual stores to ensure they are received by the appropriate staff. In some circumstances, violation letters have been sent to the incorrect staff members or to an individual that did not work for the retailer. AMS should ensure letters are sent to the designated COOL point of contact. Reviewers should note items that were corrected on-site during the inspection and not send letters referencing such items.

**Threshold for Violation Letter:** Responding to violation letters consumes a significant amount of staff time. If only one or two violations are found at a particular store there should not be a letter sent by AMS that requires a response. Only if there is a significant pattern of violations should a response be required. In addition, AMS should give retailers leeway if consumers move product to obscure a sign with COOL information properly posted.

**Duplicative Paperwork Burdens:** When a reviewer has found an issue with a product they immediately look for that item in the next store which does not give the retailer time to address the issue and only creates a needless additional response. This procedure is not an effective or efficient way of enforcing COOL and should be stopped.

### **State of Origin Labeling**

A number of states have enacted state of origin labeling requirements for various commodities. Complying with this patchwork of state labeling laws has become very burdensome for certain retailers. These state labeling laws have no relation to food safety and serve a protectionist purpose. USDA should assess its authority to preempt these laws which increase costs to retailers and consumers unnecessarily and take action to do so.

**Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products**

FMI appreciates the flexibility the Food Safety and Inspection Service (FSIS) has provided retailers in allowing them the option of either displaying nutrition information at the point of purchase for major muscle or labeling individual packages. FSIS however has not extended this flexibility to ground or chopped products. For these items, nutrition information must appear in a label affixed to the package. FMI believes FSIS should grant retailers the flexibility to decide whether label ground or chopped products individually with nutrition information or provide such information to consumers at the point of purchase.

The requirement to label ground or chopped products individually imposes very substantial costs on retailers with little benefit to consumers. Retailers will have to make costly software upgrades to newer scale systems. Scales that are older may not have the capability of printing nutrition labels at all requiring retailers to purchase new scales. The latest scales can cost upwards of \$3,000 each. FSIS should allow retailers with the option of providing nutrition information for ground product either on the label or at the point of purchase. Either way consumers have access to the nutrition information; however, by permitting nutrition information for ground and chopped products to be provided at the point of purchase, the costs of compliance will be reduced dramatically.

We appreciate your attention on these important issues. If you have any questions please feel free to contact me at [elieberman@fmi.org](mailto:elieberman@fmi.org) or (202) 220-0614.

Sincerely,



Erik R. Lieberman  
Regulatory Counsel