



THE VOICE OF FOOD RETAIL

Feeding Families  Enriching Lives

October 22, 2014

Docket Clerk
U.S. Department of Agriculture (USDA)
Food Safety and Inspection Service
1400 Independence Avenue SW.
Mailstop 3782, 8-163B
Washington, DC 20250-3700

RE: Records to be Kept by Official Establishments and Retail Stores that Grind Raw Beef Products

Docket No. FSIS-2009-0011

Dear Sir or Madam:

On July 22, 2014, the U.S. Department of Agriculture's Food Safety and Inspection Service ("FSIS" or "the Agency") published in the *Federal Register* a proposed rule entitled "Records to be Kept by Official Establishments and Retail Stores that Grind Raw Beef Products" (the "Proposed Rule").¹ In conjunction with this Proposed Rule, FSIS also posted a document, "Review of the Adequacy of Ground Beef Production Records at Retail Markets for Traceback Activities During Foodborne Disease Investigations" used to support the need for the Proposed Rule. In August, the comment period was extended to October 22, 2014.

The Food Marketing Institute (FMI) proudly advocates on behalf of the food retail industry. FMI's U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost \$770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores. For more information, visit www.fmi.org and for information regarding the FMI foundation, visit www.fmifoundation.org.

Background

FMI supports record keeping for the grinding of raw beef at retail establishments and believes that if FSIS considers the comments below, a Final Rule will protect public health, improve investigation, response and recovery time while providing a workable framework for our members. FMI notes that in February 2013, a sample record keeping form² and comprehensive guide to recordkeeping was

¹ 79 Fed. Reg. 42464 (July 22, 2014).

² FMI Comprehensive Guide Meat Ground at Retail Recordkeeping and Sanitation (June 2013) available at <http://www.fmi.org/docs/default-source/food-safety-best-practice-guides/meat-ground-at-retail-comprehensive-guide.pdf?sfvrsn=6>

provided to our members as part of a best practices document³ that we believe provides the necessary information for FSIS to determine the source and amount of products in the beef ground at retail in the event of an investigation. We encourage FSIS to consider this example as a more user-friendly record in an effort to better ensure consistent compliance at all levels of the retail sector. FMI's best practices document has been widely adopted by our membership. According to FMI surveys, over three quarters of FMI members maintain records on the meat products ground at retail although the level of detail in the records varies. FMI agrees that complete records result in more efficient recalls which assist a retailer's ability to limit the scope and size of the recalled product.

FMI appreciates the opportunity to comment on this important matter.

Introduction

The Proposed Rule would require that all official establishments and retail stores that grind raw beef products keep records identifying the suppliers of all source materials used in the preparation of each lot of raw ground beef product as well as the contact information for each source material supplier. The Proposed Rule would amend the Federal Meat Inspection Act (FMIA) to specifically require retail stores grinding raw beef products to keep records with the following information:

- 1) The name, contact, telephone number and establishment number of the supplier of the raw materials used to make each lot of raw ground beef;
- 2) The supplier lot numbers and production dates for all raw materials used;
- 3) The names of the raw materials used (including beef components and any carry-over product);
- 4) The amount of each beef component used;
- 5) The date and time each lot of raw ground beef was produced; and
- 6) The date and time the grinder and related food contact surfaces were cleaned and sanitized.

Additionally, if official establishments or retail stores prepare any ground raw beef products based on an individual consumer's request, the above information would also need to be documented. While FMI fully supports the collection of this information, we are very concerned with certain aspects of the Proposed Rule and their affect at the retail level.

The Proposed Rule is a concern to retailers as follows:

1. **FMI does not believe the names of contact personnel and phone numbers at source suppliers needs to be documented on the retail grinding record as long as the**

³ FMI Sample Ground Meat Records for Retail Stores (February 2013) available at <http://www.fmi.org/docs/food-safety-best-practice-guides/sample-ground-meat-record-for-retail-stores.pdf?sfvrsn=4>

establishment number is documented, as the official establishment number is the unique identifier for FSIS traceback purposes.

2. **FMI does not believe the record example in the Proposed Rule provides adequate flexibility to retailers.**
3. **FMI believes that Best Practices should be considered when evaluating record-keeping for trim from primal and sub-primal lots.**
4. **FMI believes that grinding for individual consumer requests should be subject to modified record keeping requirements.**
5. **FMI is concerned that the cost of compliance – while considered “economically significant” – has been grossly underestimated.**
6. **FMI believes FSIS should provide additional clarity on terms used in the sample Production Log.**
7. **FMI is concerned that implementation could take much longer than the Proposed Rule anticipates.**
8. **Retailers Should Include Restaurants and other Food Establishments.**

Impact on FMI Members

FMI does not believe the names of contact personnel and phone numbers at source suppliers needs to be documented on the retail grinding record as long as the establishment number is documented, as the official establishment number is the unique identifier for FSIS traceback purposes.

Under proposed §320.1(b)(4)(i)(A) records would have to include “the names, points of contact, phone numbers, and establishment numbers of the establishments supplying the materials used to prepare each lot of raw ground beef product.” FMI does not believe the names of contact personnel and phone numbers from its members’ many source suppliers needs to be provided on the required record. The documentation of each source suppliers’ establishment number is the most definitive information available. The establishment number is a unique identifier issued to each establishment granted Federal inspection so there will be absolutely no confusion to FSIS as to where the source material originated.

FMI strongly believes that the names, points of contact and phone numbers are incredibly dynamic and are therefore not readily available at the store level. Moreover, these contact personnel may vary depending on the company. Some personnel may be located and connected to a specific establishment while other establishments rely on corporate personnel to assist in any investigation of a positive result.

FMI also believes that recording the names of contact personnel and phone numbers will result in increased record keeping time with no corresponding benefit to public health or the inspector’s ability to improve response and recovery time. Also, we believe that simplified record keeping requirements lead to more reliable data. Recording too much information into one field makes it more likely that the information recorded will be inaccurate, illegible and incomplete.

FMI believes that in the event of an investigation the establishment number alone would be more useful in identifying the proper personnel of the supplier. In the Proposed Rule, FSIS notes that it

intends “to require that only the most critical information be recorded while leaving the remaining possible fields as a voluntary component.” FMI believes that the simplest record keeping requirements will enable FSIS to effectively traceback product in an investigation without imposing unnecessary and burdensome recordkeeping requirements on industry.

FMI suggests the following changes to the regulatory language in §320.1(b)(4)(i)(A):

“The establishment number of the establishments supplying the materials used to prepare each lot of ground beef product. Establishment number means the unique identifier issued to each establishment granted Federal inspection by the United States Department of Agriculture.”

FMI proposes that in the event of an investigation the contact personnel, phone number and supplier information will be made available within a reasonable time.

Additionally, FMI does not believe that the name and signature of the employee recording information on the grinding log should be required in a Final Rule. Significant resistance may be encountered pertaining to recording employee names and signatures and it is not essential information for traceback in the event of an investigation.

FMI does not believe the record example in the Proposed Rule provides adequate flexibility to retailers.

While FMI agrees with the agency that records are needed; the choice of records should be flexible. One type of operation may only grind and package producing no trim versus another operation that is producing and using trim. Both of these should be able to develop a record that works best in each respective operation. Moreover, the use of electronic records – regardless of the format – should be permitted as these will allow food retailers to reduce the man-hours needed for manual paper-based recording. For example, there may be an opportunity to use scanning technology to allow an establishment number and/or product type and coding information to be easily captured. Not only would this option decrease man-hours; it would also greatly increase the accuracy of the records. FSIS needs to consider all options that allow the required information to be captured to increase the accuracy and completeness of the records. Additionally, regulations should be flexible enough to allow for use of future technological advances and inventions in recordkeeping.

FMI believes that a prescriptive grinding log could create challenges in enforcement for both inspectors and stores that decide not to use the prescribed production log. FMI is concerned that the FSIS-proposed grinding log pictured in the Federal Register will be interpreted as the *official* production log resulting in significant enforcement challenges for stores that deviate from this format. As stated above, many retailers already maintain voluntary records and they should not be required to modify current formats to match the sample form grid-by-grid.

In addition to record flexibility; FMI members do not believe there is a need to keep records for more than 6 months. While the Proposed Rule discusses the need to maintain grinding logs for two years or more in order to be consistent with the recordkeeping requirements of the FMIA, FMI believes that 6 months is more appropriate for records maintained in a production establishment – not retail

stores preparing fresh meat products for sale to consumers. These products are ground and sold fresh to consumers. FMI's Food Keeper guide recommends that fresh, ground meat be consumed in 1-2 days and within 3-4 months if frozen.⁴ Therefore, it is highly unlikely that a consumer would still be in possession of a product longer than 4 months in the event of an investigation or recall.

Because of this, a concern with illness will be known and a timely investigation started within a very short timeframe – certainly less than 6 months. Further, the maintenance of paper-based records requires time, space and imposes additional costs with no corresponding benefit in the event of an investigation. FMI requests that FSIS only require these types of records be maintained for 6 months or less.

FMI believes that best practices should be considered when evaluating record keeping requirements for trim from primal and sub-primal lots.

FMI would like to provide additional information as to how the Proposed Rule will impact the practice of grinding trim for ground beef. Currently, a number of FMI members and other retailers grind the trim from primals and sub-primals, which is a significant source for the ground beef sold in their stores. This trim is placed in grinding lugs throughout the day, and is ground as needed. As a best practice, the FMI Comprehensive Guide recommends that store-generated trim should be ground at the end of the grinding session and segregated from other products. The goal is to separate trim from other products and to have it be as small of a lot as possible to limit the size of a possible investigation or recall. FMI encourages our members to store trim in clean and sanitized lugs under refrigeration and that all trim lugs be properly labeled with the primal source, date, time and employee.

Some stores trim twenty or more primal cuts per day, with the average primal producing approximately one pound of trim. Our members are concerned that it would be operationally prohibitive for the store to separately weigh and record the small amount of trim that goes into the grinding lug every time a primal is trimmed. The concern is that such a requirement would force retailers to stop using trim for grinding altogether. If our members are effectively unable to produce ground beef from trim, they will have to purchase replacement product for grinding. The cost of this replacement product, for a single retailer, could easily reach into the millions of dollars annually. Meanwhile, millions of pounds of trim would simply be wasted. According to some estimates, this would result in \$17 million pounds of waste and \$58 million worth of discarded product annually. Additionally, to avoid generating trim, denuded meat would need to be purchased resulting in added annual raw material expenses. Food waste is a significant concern for the industry and the agency should be cognizant of this issue in promulgating a Final Rule. FMI notes that the Proposed Rule does not take into account the expected economic impact of the Proposed Rule arising from such changes in retailer business practices, especially with respect to grinding trim.

We encourage FSIS to recognize the practical, economic and food preservation reasons for the use of beef trim and consider a food retail establishment's adoption of beef grinding best practices, when

⁴ Food Marketing Institute, The Food Keeper, available at <http://www.fmi.org/industry-topics/consumer-affairs/food-keeper-food-storage-database> (last accessed October 22, 2014).

implementing and evaluating recordkeeping requirements for trim from primal and sub-primal beef cuts.

FMI believes that grinding for individual consumer requests should be subject to modified record keeping requirements.

In the Proposed Rule, FSIS imposes record keeping obligations with respect to raw beef products that are ground at an individual customer's request. FMI believes that FSIS should propose modified recordkeeping requirements for individual customer requests. Many of our members grind raw beef products at an individual's customer request as a special service for their customers. FMI is concerned that without modified recordkeeping for individual customer requests stores will find the service cost-prohibitive and overly-burdensome and will therefore stop the practice altogether. Additionally, the public health impact associated with one individual customer request is incredibly minimal in comparison to the time and costs associated with record keeping for each request. Many of our members have adopted best practices with respect to individual customer grinds, such as waiting until the end of the day to fulfill the request. Other members ensure there is a clear break in the production cycle following the individual customer grind so there is no risk that product will be carried over into a later lot. Further, FMI believes that the ability to track an establishment number on a customer request for a sub-primal purchased from a display case will be extremely difficult, if not impossible.

FMI strongly urges FSIS to propose modified recordkeeping requirements for individual customer requests to satisfy requirements in a Final Rule.

FMI is concerned that the cost of compliance – while considered “economically significant” – has been grossly underestimated.

FMI members are very concerned that even though the Proposed Rule is considered to be economically significant, FSIS has greatly under-estimated the cost of compliance. FSIS estimates that retailers with records currently in place, but needing upgrading will need about 30-60 additional seconds per day to complete the records. Firms that do not currently have grinding logs will need 60-90 additional seconds per day. FMI members have provided information supporting these estimates to be gross under-estimations of the actual time a company will spend if it expects to comply with this Proposed Rule as written. Additionally, FMI believes that FSIS failed to account for additional costs of the Proposed Rule including; supplies for record keeping, record maintenance and storage, employee training, increased sanitation costs, and change in practices for grinding trim.

FSIS estimated that the total estimated costs to industry would be between \$2.69 million to \$4.39 million. FMI believes that a conservative estimate for a medium-to-large sized retailer to comply with paper-based record keeping requirements under the Proposed Rule will result in minimum added labor time of 4 hours per week or 214 additional hours per year. These minutes include time to identify the product, enter identifications at the scale for each package, and enter information onto the log sheets. For labor alone, the impact will be an additional \$3,203,536 annually which translates into an additional \$1.10-\$1.39 per case of beef to be logged.

Further, FSIS only took into account the time required to maintain the records on a per-day basis. Many of our members produce multiple lots per day and would be required to make a new entry every time a new lot is ground. FSIS should take into account the time involved in the recording for each lot, not per day. Some stores record upwards of 15-20 lots per day which involves significant labor time and higher costs.

FMI members are also concerned that the costs of new technology that will be required to comply with the Proposed Rule will add substantial costs to current operations. For example, retailers with electronic record keeping system will need to install wireless internet in each of their locations to adequately facilitate electronic tracking and recordkeeping tools, as opposed to maintaining paper records. Scales for weighing product will also need to be updated to be compatible in an electronic based system.

FMI believes that training will significantly increase the costs of compliance with the Proposed Rule. Retailers who currently have no records will be required to train employees on what information is required, how often records must be kept and how to verify the records are complete and stored properly.

FMI is concerned that implementation could take much longer than the Proposed Rule anticipates.

FMI members are also very concerned that the actual time to implement this Proposed Rule, once adopted, will take much longer than contemplated. Because many members will need to develop and/or modify records currently in use; FMI members believe that, with the extensive training that will be needed, implementation time for compliance needs to be adequate. FMI believes that the implementation deadline for smaller retailers should be extended to allow for adequate outreach and training efforts.

Retailers should include restaurants and other food establishments

FSIS states that three major kinds of businesses are exempt from the Proposed Rule: convenience stores, meat and meat product merchant wholesalers and full-service and limited-service restaurants. While retail stores are exempt from the provisions of the FMLA and the meat inspection regulations with regard to inspection of the preparation of the products they are not exempt from their sanitary or recordkeeping requirements. FMI believes that restaurants and other food establishments that grind beef present the same public health risks and should be required to keep records to ensure the source can be identified in the event of an outbreak. FMI sees absolutely no justification for excluding other food establishments that grind raw beef from the Proposed Rule since the purpose is traceability to protect public health.

Conclusion

FMI supports the need for documentation of raw beef products ground at retail establishments to ensure product can be traced back to its supplier sources. We appreciate the Agencies' willingness to

meet with FMI and our members to explain your position, the public health impact and the underlying laws and regulations that led to this proposed rule.

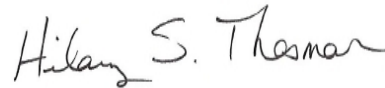
FMI strongly encourages FSIS to finalize requirements that allow flexibility in accomplishing traceability as well as the time to effectively implement systems to comply with a Final Rule. The essential elements of the records are to be able to link the product from the supplier to the product ground, to the product packaged at retail. As long as retailers are able to do that with a simple and effective system, FSIS should allow maximum flexibility in implementing the regulatory requirements.

We appreciate the opportunity to comment on this Proposed Rule and look forward to working with the Agency on implementing the forthcoming regulation. Please do not hesitate to contact Stephanie Barnes with any questions at sbarnes@fmi.org or (202) 220-0614.

Sincerely,



Stephanie K. Barnes
Regulatory Counsel



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