



November 12, 2010

Via E-mail

Ms. Rayne Pegg
Administrator
Agricultural Marketing Service
United States Department of Agriculture
South Agricultural Building
1400 Independence Avenue, SW
Mail Stop 0201
Washington, DC 20250

Dear Ms. Pegg:

I write today regarding issues with country of origin labeling (COOL) inspections. Food Marketing Institute (FMI) members¹ take very seriously their obligations under the COOL law and industry compliance rates are 97 percent. FMI appreciated how AMS considered our input in the implementation of COOL and we have very much valued all of the help your staff has given us in answering compliance questions since. However, we have concerns that the inspection process has become unnecessarily burdensome. I would like to share with you 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

¹ 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.

inspected three times this summer. 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 with this policy which makes it harder for retailers to correct violations.

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

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issue and only creates a needless additional response. This procedure is not an effective or efficient way of enforcing COOL and should be stopped.

We appreciate your attention to this important matter. If you have any questions please feel free to contact me at elieberman@fmi.org or (202) 220-0614.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Lieberman". The signature is fluid and cursive, with the first name "Erik" being the most prominent.

Erik R. Lieberman
Regulatory Counsel