

FMI Government Relations and Public Affairs Conference Call

September 10, 2013

[FMI G.R. Committee Page](#)

[@FMI_GR](#)

Thank you for participating in today's call. We look forward to seeing many of you in two weeks at the FMI Government Relations Committee meeting in Washington on September 24, which will be followed by a dinner in conjunction with the Spirit of Mt Vernon event. Please let us know if you plan to attend the meeting and/or dinner if you have not already done so.

Regulatory Update:

Food Safety Modernization Act

Next Thursday, September 19, FDA will be holding a [public meeting](#) to discuss its recently released FSMA proposed rules on [foreign supplier verification programs](#) and [third party auditor accreditation](#). FMI will be at the meeting, and will be making a public statement on the proposed rules. The Safe Quality Food Institute (SQF) will also make a separate statement about the third party auditor regulation. FMI is in the process of drafting its written comments on all four of the FSMA proposed rules issued this year, and we will share drafts of the comments over the next few weeks. The FSVP and third party auditor comments are due on November 26, and comments for the [preventive controls](#) and [produce safety](#) proposed rules, released in January, are due November 15.

Mechanically Tenderized Beef Products

FMI will be submitting comments with USDA's Food Safety and Inspection Service in response to the release of its [proposed rule](#) on mechanically tenderized beef products. Comments are now due by October 8 following an [extension](#) of the comment period.

COOL Burden Relief

As indicated in a memo received by FMI last Thursday from the head of USDA's country of origin labeling (COOL) program, COOL inspectors will no longer be requesting records from retailers when they conduct initial inspections. Currently, inspectors are instructed to request records for five items to verify COOL claims for each inspection they conduct. Responding to these requests has imposed very significant burdens on retailers and wholesalers. USDA will now be instructing inspectors to not request any records during initial retail inspections, instead store managers will be interviewed during the inspection on general COOL recordkeeping practices. Only if problems are detected during the interview will additional documentation be requested. FMI will be asking USDA about how they will go about training inspectors to take the new policy into account. For more information, contact Erik Lieberman, elieberman@fmi.org.

Patent Trolls:

FMI joined the Internet Association (IA), National Restaurant Association (NRA) and National Retail Federation (NRF) in launching a print and radio advertising campaign in targeted states and congressional districts urging lawmakers to support legislation to reform and put an end to abuse from patent trolls. The patent troll campaign and issue have received widespread attention from lawmakers and media outlets, and we expect a bill from House Judiciary Chairman Bob Goodlatte (R-VA) to be introduced later this week. As a result of the ad campaign, NPR's "All Things Considered" covered the issue and interviewed FMI's regulatory counsel Erik Lieberman ([link](#)).

Health Care:

Employers Need to Provide Health Care/FLSA Notices to Employees Beginning Oct. 1

One of the ACA employer provisions NOT delayed is a requirement for employers to provide notice of coverage options, including the availability of an Exchange. Beginning October 1, 2013, “[e]mployers must provide a notice of coverage options to each employee, regardless of plan enrollment status (if applicable) or of part-time or full-time status.” “For 2014, the Department will consider a notice to be provided at the time of hiring if the notice is provided within 14 days of an employee’s start date.” DOL also provided “model” notices that employers may use as templates. The ACA required employers to provide this information by March 1, but the effective date was delayed until to October 1 due to federal agencies not providing necessary guidance.

Back in May, the Department of Labor's Employee Benefits Security Administration released temporary guidance and “the availability of the Model Notice to Employees of Coverage Options” for employers to comply with Affordable Care Act (ACA) requirements to provide employees with information on potential availability of premium tax credits, coverage options available Exchanges, and whether the employer-sponsored plan meets ACA’s minimum value standards. The Department of Labor recently released a set of [Frequently Asked Questions](#), which provide additional guidance on providing notice to employees about their health coverage options (including Exchanges). Links to the guidance and model forms may be found below.

- Technical Release 2013-02 - Guidance on the notice to employees of coverage options under FLSA §18B and updated model election notice under COBRA, available at <http://www.dol.gov/ebsa/newsroom/tr13-02.html>
- Model notice for employers who offer a health plan to some or all employees, available at <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>
- Model notice for employers who do not offer a health plan, available at <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>
- COBRA model election notice, available at <http://www.dol.gov/ebsa/modelelectionnotice.doc>
- COBRA model election notice redline version (to show May 2013 changes), available at <http://www.dol.gov/ebsa/modelelectionnoticeredline.doc>

Please contact Rob Rosado at rosado@fmi.org with questions or comments.

Proposed ACA Employer Reporting Released

The Treasury Department released proposed rules for two critical employer reporting elements under the Affordable Care Act that will warrant your company’s review and input for comment.

- [IRS Proposed Rule 26 CFR Part 301 \[REG-136630-12\] addresses reporting requirements under section 6056 of the Internal Revenue Code](#) that effectively demonstrate large employers’ (50+ full-time equivalents) compliance with the Affordable Care Act’s employer mandates.
- [IRS Proposed Rule 26 CFR Parts 1 and 301 \[REG-132455-11\] addresses reporting requirements under section 6055 of the Internal Revenue Code](#), are requirements for all employers to provide information to IRS regarding health coverage offered to employees for purposes of determining whether an individual (the employee) is eligible for a health care premium tax credit.

It is important to note that these are Proposed Rules and not effective, but also that IRS and Treasury officials are seeking comments from employers on ways to streamline these reporting

requirements. The agencies seek to have final rules released by the end of 2013, allowing for voluntary reporting of the 2014 calendar year (submitted reporting by January 31, 2015) and transitioning to mandatory reporting of the 2015 calendar year (submitted reporting by January 31, 2016). Comments are due November 8. We will be seeking input for comments to be submitted by the E-FLEX Coalition, addressing concerns of employers with fluctuating workforces. FMI contributed to letters raising employers' concerns submitted by the E-FLEX Coalition to the Treasury Department, as recently as [August 5, 2013](#), but also as far back as [June 2012](#) and [October 2011](#). Please contact Rob Rosado (rrosado@fmi.org; 202/220-0642) with any comments/questions.

Member Store Visits/Field Hearing

We greatly appreciate all of your companies for hosting and meeting with your Members of Congress over the August period. We have been getting reports from you, as well as from congressional staff, about supermarket operators' raising the health care law's 30-hour FTE definition. Please share any photos from these Member visits, and we will highlight the visits in our newsletters and other communications.

We also greatly appreciate Donnie Meadows (with a hat-tip to Israel O'Quinn) of K-VA-T/Food City Stores for stepping up and representing the supermarket industry by testifying at an [August 27 House field hearing](#) on employers' concerns with the Affordable Care Act.

Tax Reform:

House Ways and Means Committee Republicans met this week to formulate a tentative schedule to address tax reform later this fall. Chairman Dave Camp (R-MI) is expected to release a bill in late October or early November. His draft bill will likely lower the top rates for corporate and individual taxpayers to 25%. The lower top rates would be accompanied by deep cuts to deductibles and exemptions and attempt to serve as a starting point for tax reform discussions. For more information, contact Andy Harig, aharig@fmi.org.

The current authorization for the federal government's spending expires September 30, but lawmakers are expected to move a continuing resolution through Congress rather smoothly, in contrast to past threats of a government shutdown. However, in mid-October, the U.S. will approach its debt limit, requiring lawmakers to raise the debt ceiling, and this process should be a harder lift for congressional leaders without some concessions on both sides. House Majority Leader Eric Cantor (R-VA) has been meeting with lawmakers to compile a list of options/concessions that will ensure a successful vote in the House to raise the debt ceiling.

E-Fairness:

Over the next couple of weeks, House Judiciary Chairman Bob Goodlatte (R-VA) is expected to unveil a set of principles on e-fairness, which will help bring momentum back to the online sales tax issue. With the host of other issues facing the Judiciary Committee, we don't expect real progress on e-fairness until December or early next year. The Senate passed legislation ([S. 743](#)) earlier this year, but action has been stalled in the House. For more information, contact Andy Harig, aharig@fmi.org.

Helium Reserve:

Unless Congress acts, the Federal Helium Reserve will shut down on October 7. The reserve supplies more than one-third of the world's crude helium. Legislation has been proposed that would allow the helium reserve to continue operating normally through the end of the next fiscal year. The House passed a measure ([H.R. 527](#)) in April, and similar legislation ([S. 783](#)) has been introduced in the Senate,

but some Senators have raised concern over parts of the bill's spending provisions and aides were working on a legislative strategy over the August recess. Please provide FMI with any feedback on the helium issue, and how a potential shutdown could impact balloon or other types of sales within your stores. We have already heard from a few members that this would be a concern to their balloon vendors. For more information, contact Andy Harig, aharig@fmi.org.

Labor Update:

Persuader Regulations

The Department of Labor (DOL) is expected to release a final rule to its "[persuader](#)" regulations in November. The rule, as proposed, would drastically narrow the scope of the long-standing "advice exemption" under Section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), resulting in increased employer, attorney and consultant reporting obligations on all matters relating to labor relations and union organizing activities. FMI has [argued](#) that if the proposed rule would dissuade many law firms and third-party consultants from offering labor relations advice and services to employers because of its intrusive and burdensome requirements. The Coalition for a Democratic Workplace (CDW), of which FMI is a member, has publically stated it will challenge any final regulation in court that is similar to the 2011 proposed rule.

NLRB

Now that the National Labor Relations Board has five Senate-confirmed members on its board, there is speculation that there may be new momentum to the enactment of its "quickie" election rule. The NLRB's 2011 [final rule](#), which was designed to speed up union election procedures, was overturned in court in 2012 on grounds that the NLRB lacked a quorum. We recently shared a [memo](#) with insight from Peter Schaumber, a former Chairman of the NLRB, on what he expects from the new NLRB, and we wanted to circulate it again in case it was overlooked before. FMI's leadership role in the Workforce Fairness Institute provides us and our members with timely analysis affecting the employer community. For more information, contact Ty Kelley, tkelley@fmi.org.

Farm Bill:

The House is expected to consider legislation next week to address the farm bill's nutrition title, which will include the previously proposed \$40 billion in cuts to SNAP. The timing on the House's next steps are still rather uncertain despite the upcoming September 30 farm bill expiration, but the passage of a continuing resolution will ensure that SNAP funding will continue regardless of the farm bill's progress.

Additionally, SNAP benefits are expected to increase on October 1 to reflect cost of living adjustments. Separately, SNAP participants will see a reduction to their SNAP benefits in November as a result of the expiration of benefit increases from stimulus measures passed during the recession. For additional information, please see the [FNS memo](#) on the SNAP benefit adjustments. For more information, contact Hannah Walker, hwalker@fmi.org.

NRDC Webinar on Food Product Dating:

Please see the notice below regarding a webinar taking place on **Thursday, September 12** regarding food expiration dates. This webinar is a preview of a report from NRDC and the Harvard Law School. They were kind to arrange for a preview for FMI members. **FMI was not involved in this report, the findings or the recommendations.**

Please join the Food Marketing Institute on **September 12th at 3:30 PM EST**, for a member-only webinar previewing new research and recommendations on food expiration dates.

This one hour webinar will provide a preview of a report that will be released on September 17th from the Natural Resources Defense Council and Harvard Law School. The report includes a summary of federal and state laws on expiration dates, a summary of shortcomings of the current system, and recommendations on how to improve the system – including ideas for reducing consumer confusion and food waste. Speakers include Dana Gunders, staff scientist for NRDC and author of the recent report [*Wasted: How America is Losing Up To 40 Percent of its Food from Farm to Fork to Landfill*](#), and Emily Broad Leib's, director of the Harvard Food Law and Policy Clinic.

[Click here to register for this FMI members-only webinar.](#)

FMI State Regional Meetings Information:

The FMI Regional State Issues Forums are scheduled and the participating hotels are ready to receive reservations. All attendees need to arrange room reservations directly with the hotels. While these are one-day meetings, FMI will host a voluntary dinner for those arriving the evening before each meeting. The meetings will generally run from 10:00 AM until 4:00 PM. This provides morning travel time for those who will be driving to the meeting and, hopefully, enough of a head start to beat the afternoon traffic home. Please RSVP your meeting attendance to Mike Green at mgreen@fmi.org or (202) 220-0605. We hope you can make it. Click [here](#) for the dates and locations of the meetings.

Upcoming Meetings:

- Fall Government Relations Committee meeting – September 24 at 12:00 – 5:00 p.m.
- 2014 GR/PA Planning Meeting - January 9th from 11:30-5:30 in Phoenix, AZ with a committee dinner that evening
- 2014 Day in Washington, Wednesday, April 30-Thursday, May 1