

**U.S. SENATE  
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP**

**"How the Hidden Cost of Federal Regulations Impact Small Businesses and Economic Growth"**

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**Chairman Vitter, Congressman Graves, and Members of the Committees:**

First, thank you for the opportunity to testify at this important field hearing on “How the Hidden Cost of Federal Regulations Impact Small Businesses and Economic Growth.”

Associated Grocers, Inc. was founded in 1950 by 17 individuals, and has grown to a membership of over 200 independent retail outlets in Louisiana, Mississippi and Texas. We currently have approximately 700 employees in Louisiana, and are committed to our original mission of the *“support and success of the independent retail grocer.”*

Achieving our mission has proven to be more challenging, and I can think of nothing that is currently having a greater financial impact on our company, and our mission, than federal regulations and federal compliance requirements.

With a targeted 1% net profit margin, every mandate and directive impacts our costs of operations and therefore consumer prices.

I will start by highlighting a few regulations that will be obvious to consumers, and then others that are more behind the scenes in their impact and effect.

First is Country of Origin labeling (often referred to as COOL). When COOL was passed by Congress in 2002, the industry was already voluntarily engaged in extensive efforts to provide “interested” consumers with “origin” information for the food items they purchased. The new law essentially short-circuited this market-driven approach, and forced the industry to spend tens of millions of dollars in unnecessary compliance costs. Despite the expense, COOL was put into place, and the industry achieved high compliance rates in inspections by USDA and state inspectors. However, Canada and Mexico brought a complaint in the World Trade Organization claiming COOL violated our country’s trade commitments, and they won. USDA “rewrote” the rule implementing COOL in order to comply with the WTO's decision, and wholesalers and retailers once again spent the resources necessary to change their systems. The USDA's changes have, so far, been found to be insufficient to address the WTO's concerns, and wholesalers and retailers are once again going to be held responsible for additional changes to their systems and

record keeping. This program, that now means nothing to consumers, will require us to tell consumers where their meat was born, raised, and slaughtered.

Second: In the state of Louisiana, I must mention WIC (also known as the Supplementary Nutrition Assistance Program for Women, Infants and Children) and the moratorium that is currently in place that prevents any new stores, or any stores who change ownership, to be an authorized WIC food retailer. This prevents WIC customers from shopping in a new store potentially opening in a food desert, or a store with better prices, or fresher offerings.

Government should not penalize stores and consumers who did nothing wrong. There are only 3 states in the country affected by this moratorium, which was unilaterally implemented by the USDA regulators in charge of WIC. This “USDA-imposed” moratorium is directly affecting the viability of stores operating in Louisiana and hindering economic development. Plans for new stores and/or acquisitions of outlets are being postponed or cancelled altogether. The grocery business is very competitive, and placing an indefinite moratorium on new licenses, without any notice or timeframe, makes it challenging for retail food outlets to open new locations and for low-income citizens to find stores to purchase WIC food products. There is also a need to automate the WIC program, with the EBT technology used for SNAP benefits.

Next: The Affordable Care Act, and its definition of full time employees, and its mandatory auto enrollment requirements are problematic. Full time status should be defined as being 40 hours per week, and the means of verification and tracking should be made simple and easy to comply. The companies with fully insured and/or self-insured health plans should be allowed to make needed plan changes without losing “grandfathering” status. The fact that these companies offered coverages prior to the ACA for their employees should be proof that those companies were doing the right thing for their employees and should not be penalized.

Next is Menu Labeling. In the 2000+ page Affordable Care Act, “Four” words were added that will cost the industry hundreds of millions of dollars: Those four words are “similar retail food establishments.” Because supermarkets do not generally have menus, or menu boards, and yet may have hundreds of “covered” items, they will have to create ways to display, analyze, and keep records on calorie content, complete nutritional information, and provide a succinct statement regarding how this is measured for a 2,000 calorie diet. If a product is not labeled, then it is considered misbranded and not allowed to be sold. All of these requirements have to be accomplished by December 1, 2015 – a totally unworkable timeframe.

#### The Food Safety Modernization Act

During the 111th Congress, lawmakers passed food safety legislation that authorized the most significant changes to U.S. food safety laws in over 70 years. The Food Safety Modernization Act -“FSMA” (P.L. 111-353) was signed into law on January 4, 2011, and was designed to improve and modernize the country’s food safety system and provide the Food and Drug Administration (FDA) with the necessary tools and authorities to protect our food supply. The law makes expansive changes to the Federal Food, Drug, and Cosmetic Act, which includes new enforcement authorities, new program activities, and increased inspections. Our industry was supportive throughout the legislative process and worked to ensure that the statute would not impose unnecessary burdens on the industry. Now we are faced with seven major proposed rules under

FSMA:

- 1) Current Good Manufacturing Practice and Hazard Analysis, and Risk-Based Preventive Controls for “Human Food”.
- 2) Current Good Manufacturing Practice and Hazard Analysis, and Risk-Based Preventive Controls for Food for “Animals”.
- 3) Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.
- 4) Food Supplier Verification Programs (FSVP) for Importers of Food for Humans and Animals.
- 5) Sanitary Transportation of Human and Animal Food.
- 6) Focused Mitigation Strategies to Protect Food Against Intentional Adulteration.
- 7) Accreditation of Third-Party Auditors and Certification Bodies to Conduct Food Safety Audits and to Issue Certifications.

Each of these rules are close to 500 pages in length. I represent independent retailers who are trying to stock shelves and sell groceries, not read, understand, and implement rules longer than “War and Peace.”

Other concerns –

- 1) The Fair Labor Standards Act and its various limitations and restrictions placed on providing incentives to hourly workers. Their desire to raise the salary threshold and make changes to the current “primary duty test”.
- 2) The rule making of the National Labor Relations Board (NLRB) and their attempts to make unionization easier.
- 3) Trucking regulations and truck driver “hours of service”, and the unrealistic and impractical nature of the rules limiting the ability of the driver to work and be behind the wheel (BMI/ Sleep Apnea testing particularly).
- 4) Interchange/Swipe Fees – concern over the ever-escalating costs and rate increases.
- 5) GMO labeling (Genetically Modified Organisms).
- 6) Estate Tax – the survival and transferability of private-owned business in America, and the need for real corporate and individual tax reform, in general.

In closing, the Federal Government, and its regulatory agencies, assume that the “regulated” are guilty until proven innocent, unlike in our criminal justice system where the guilt must be proven. Obviously, I have only highlighted a few of the big concerns, but we certainly appreciate your interest and focus on these very important areas and would be happy to try to answer any of your questions.