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June 9, 2006

Docket Clerk
U.S. Department of Agriculture
Food Safety and Inspection Service
300 12th Street, SW
Room 102 Cotton Annex
Washington, DC 20250

**Re: Docket No. 04-006P Availability of Lists of Retail Consignees
During Meat or Poultry Product Recalls**

Dear Sir or Madam:

The National Turkey Federation (NTF) appreciates the opportunity to submit comments to the above-mentioned proposed rule. NTF represented nearly 100 percent of all turkey processors, growers, and allied industries. NTF is an advocate for all segments of the U.S. turkey industry, providing services and conducting activities, which increase demand for its members' products and protect and enhance the ability to effectively and profitably provide wholesome, high quality, nutritious turkey products. It is the only association representing the turkey industry exclusively.

The turkey industry shares the belief with the agency that information provided to the consuming public is vital during a meat or poultry product recall. Therefore, the industry voluntarily provides all necessary information in the unfortunate event of a product recall. This information allows for clear and concise identification of the recalled product to help ensure consumers return the implicated product.

The agency's proposed rule does not provide additional clarity to the recall process. It is our opinion that the proposed actions would have a deleterious effect on the recall process and create confusion with consumers by causing them to focus less on the clear and concise product identification information and more on information that has the potential to be incorrect, misleading and not timely. All three of these factors are absolutely critical when food safety recalls are being implemented.

Added Confusion

During a product recall, accurate information is provided as quickly as possible by the recalling establishment to the agency. FSIS then publishes a press release and a Recall Notification Report (RNR) containing the relevant information. A critical piece of information FSIS allows on the press release is the name and contact of a company official. This direct link to the company allows consumers, state regulators or other interested parties alike to contact the company directly if there is confusion or other information is needed. In addition, the press release has more commonly included copies of labels in a format readily available to consumers and other interested parties in a format that can be shown on a computer or printed for reference as needed. Both the press release and the RNR contain the vital information that allows the consumer to properly identify the implicated product to be returned or destroyed.

The FSIS proposed rule to compile and publish a list of retail outlets where the product was available for purchase will only add confusion to the situation and could hamper the effects of a recall. As FSIS indicated in the preamble to the proposed rule as well as other public records, the current system is effective. The information provided is the single most important information available that ensures timely and accurate identification of implicated product. In both the press release and the RNR, the agency instructs (along with the pictorial information of the label) consumers to check the product by matching production coding, such as lot identification and establishment number. The agency's proposed rule to develop and publish a list of retail establishments that sold the implicated product "at some later date" can only add confusion and possibly dilute the importance of the product identification information provided if any consumer delays responding to the recall notification waiting to see the list for their corner grocery store.

By providing additional information that will not be timely, complete or worse yet is inaccurate as a result of the fact finding process, the proposed rule will serve not to improve the recall process; rather, it will serve to be counterproductive and could increase the returns of product not implicated in the recall, contrary to the agency's thoughts detailed in the proposal. Additionally, it is not understood how the agency intends to provide the list of retail establishments, either once a complete list is tabulated or on a continuous basis, both of which have some inherent problems.

If the agency intends to provide the list of retail outlets once compilation is complete, there would be little value to such lists. The proposed rule indicates that the agency will compile the list as it conducts its recall effectiveness checks, which take several days to weeks to complete. Should the agency decide to post the retail outlets under this scenario, there seems to be little to no value to public health.

Posting this list on the FSIS website also assumes customers will know to check this site for information.

Should the agency provide the list of retail establishments as it compiles the list during the recall effectiveness check, there is ample room for erroneous information to be provided to the consumer. In this scenario, the information tabulated may omit retail establishments that in fact sold the implicated product, therefore, misleading the consumer if their store is not on the list. Once a consumer reviews the list and determines the retail establishment they shop at is not present, it is highly unlikely they will continue to check the list for updates which could occur even months later. Moreover, if the consumer doesn't see the retail establishment on the list, it is highly likely that they will not even look at any products in their possession.

In addition, release of data with a high likelihood of error and that may also be of little value to the consumer due to the lack of timeliness does not meet the general information quality guidelines USDA-FSIS is to apply pursuant to the Data Quality Act.

Lack of supporting data

The agency argues that the current system is effective. However, it suggests that there is a need, based on speculation from consumer groups and States, to provide the proposed information to further enhance the recall's effectiveness. There is no supporting information to justify the claims outlined in the proposal. If information exists to validate the claim that having the retail distribution list would have a significant impact on public health, the agency should provide such information.

We support any improvement in the recall process that will have a measurable, positive effect on public health. Therefore, the agency should provide any quantifiable information it may currently retain that supports the proposed rule. Without such information, we cannot envision the proposed rule will have a positive effect on public health.

Confidentiality

The information that is being sought through the proposed rule is considered commercial, confidential information by the industry. The agency has previously argued similarly. Now, the agency is suggesting that such information can no longer be classified as such and is no longer valuable to a particular company or a company's competitors. This is not the case.

With the retail list, a competitor would be able to immediately offer its products to that retailer to replace those removed – putting the recalling firm at immediate risk of losing its entire customer base. Without substantial legal arguments in the proposed rule, the agency should provide clarification as to how it determined such information is not afforded the protection previously granted by the agency¹.

Summary

The National Turkey Federation, again, agrees that providing accurate and concise information to the consumer in a timely manner mitigates potential exposure to recalled product. However, for the reasons listed above, we feel that the proposed rule will have a negative effect rather than the positive effect the agency discusses in the proposal. We, therefore, request the agency to abandon the proposed rule as written.

In the alternative, we request the agency reissue the rule for review and comment as long as this would include (1) an Economic Impact study assessing the potential for economic loss from competitors accessing confidential commercial information; (2) provide quantifiable supporting documentation to support how publishing confidential customer lists would increase the effectiveness of recalls beyond today's capabilities as well as significantly increasing the public's health; and (3) address how the released information complies with the USDA-FSIS Quality of Information Guidelines.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Rybolt". The signature is stylized with a large, sweeping initial "M" and "R".

Michael Rybolt, Ph.D.
Manager, Scientific and Regulatory Affairs

¹ *Federal Register* 67:79: 20009-20013