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November 20, 2000

USDA FSIS Docket Clerk

Docket No. 99-029 P

U.S. Department of Agriculture, Food Safety and Inspection Service

Room 102, Cotton Annex

300 12th Street, SW

Washington, D.C. 20250-3700

RE: Sharing Recall Information With State and Other Federal Government Agencies

The Association of Food and Drug Officials' Board of Directors, hereinafter referred to as AFDO, is pleased to offer comments on the USDA Food Safety and Inspection Service's (FSIS) proposed rule and request for comments relative to sharing recall information with State and other federal government agencies.

AFDO is a 104 year old organization that represents federal, state, and local government regulatory officials and industry associates, many of whom are actively involved in food recalls and effectiveness/audit checks of product recalls.

AFDO has been active in the organization of and the participation in workgroups with FSIS and the Food and Drug Administration (FDA) addressing the issue of recall improvement strategies. Clearly, food product recalls are an essential component of an integrated national food safety strategy. The consuming public expects them to be both effective and timely in removing contaminated food from the market place. To accomplish that expectation, all agencies with a food safety mission must coordinate their respective activities--state and federal. FSIS can best develop its recall strategy by integrating or partnering with states. Until this is possible, gaps and inefficiency will continue to occur.

AFDO held a Recall Workshop, November 16, 2000, to present recommendations the two federal agency recall workgroups and to provide an open forum for stakeholders to discuss the proposals. The AFDO/FSIS Working Group determined that the agency's recall policies and procedures are "basically sound". However, one important link to an effective recall policy has remained flawed, in that FSIS could not legally share product distribution lists with state agencies. This restriction serves to thwart the role of states in providing timely effectiveness/audit checks to verify product removal. If state food safety agencies do not know the distribution of recalled product, they cannot effectively determine its market removal. This proposed rule seeks to provide the legal basis for sharing of distribution lists which FSIS

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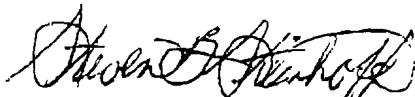
classifies as confidential commercial information. The sharing of this information will enable the state agencies to partner with FSIS in recalled product removal and thereby improve on the current ten percent level of effectiveness checks performed by USDA in response to class I recalls.

AFDO recommends that the written disclosure commitment that states are required to sign under this proposed rule have some flexibility since states cannot ignore subpoenas or orders from state courts requesting information. States cannot, and will not, sign any agreements with FSIS without such flexibility, as states must comply with court orders.

One area in the proposed rule which has raised questions among state officials as to its meaning and effect is the review under Executive Order 12988, Civil Justice Reform. It states that "This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule;.....". Does this proposed rule preempt Sunshine or Open Records Laws which many states have? Which state laws or regulations would be specifically preempted as a result of this rule?

State agencies are very close to consumers and therefore play a major roll in any product recall verification. Industry and consumers want effective and timely actions with respect to recalls. FSIS is to be commended for this proposed rule which will improve recall procedures by allowing recall information sharing. AFDO is committed to facilitating such activities.

Sincerely,



Steven B. Steinhoff, President
Association of Food and Drug Officials

cc: AFDO Board of Directors
AFDO Regional Affiliate Presidents
Ms. Denise Rooney