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UNITED STATES DEPARTMENT OF AGRICULTURE

IN RE:

NATIONAL ADVISORY COMMITTEE ON MEAT & POULTRY INSPECTION  
MEETING

Hearing held on the 23rd day of June 2003

at 6:00 p.m.

Hilton Old Town

1767 King Street

Alexandria, VA 22314

TRANSCRIPT OF PROCEEDINGS

BEFORE: DR. ALICE JOHNSON, CHAIRMAN

## P R O C E E D I N G S

June 23, 2003

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3 DR. JOHNSON: I'm Alice Johnson with the  
4 National Turkey Federation. We'll go around the room.

5 DR. LEECH: I'm Irene Leech, Citizens  
6 Consumer Council.

7 MR. SCHAD: Mark Schad, Schad Meats.

8 DR. ELFERING: Kevin Elfering, Minnesota  
9 Department of Agriculture.

10 DR. JAN: Lee Jan, Texas Department of Health.

11 DR. JOHNSON: Okay. And our facilitator from  
12 FSIS.

13 MR. KENT: Doug Kent.

14 DR. JOHNSON: Our recorder?

15 MS. LOCUS: Yolanda Locus.

16 DR. JOHNSON: Our technical experts.

17 MS. ROTH: Jane Roth.

18 MR. HICKS: Ron Hicks.

19 MR. SPERRY: Roy Sperry.

20 DR. JOHNSON: And?

21 MR. SHIRE: I'm Bernie Shire from American  
22 Association of Meat Processors.

23 DR. JOHNSON: Two more technical experts.

24 DR. LEESE: Bill Leese with whatever --  
25 Federal State Regulations at FSIS.

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1 DR. JOHNSON: Okay. And we have -- and our  
2 recorder? Yeah.

3 THE REPORTER: I'm Charlie Brown, everybody.  
4 Doug, I didn't get your last name.

5 MR. KENT: Kent.

6 DR. ELFERING: Kent.

7 DR. JOHNSON: And we're going to ask when we  
8 start talking we need to say our names. Would that help  
9 you? Okay.

10 THE REPORTER: Yes. Speak into a microphone  
11 if you can.

12 DR. JOHNSON: Okay. Speak into the  
13 microphones. They've asked us to try to work through  
14 the two questions that we have that are really like 12  
15 questions if you look at it the way I do, but that's  
16 okay. And we want to try to work through this by like  
17 7:30, 7:45 so we can get our report recommendations put  
18 together and let everybody look at them. And we will  
19 present our recommendations tomorrow at full Committee  
20 with the support of the full subcommittee or you guys  
21 will talk and back up everything we say. Right? The  
22 two questions are, "What does at least equal to mean  
23 with regard to requirements for State meat and poultry  
24 inspection programs? Please define at least equal to."  
25 And then the second question is, "What are the criteria

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1 FSIS should use for evaluating each of the 10 review  
2 components." So if we start with define "at least equal  
3 to" and we've been talking that there's actually a  
4 regulatory definition to that we'll ask Jane -- do you  
5 have it?

6 DR. LEESE: The legislative?

7 MS. ROTH: You mean the legislative?

8 DR. JOHNSON: Yeah. The legislative. I'm  
9 sorry.

10 MS. ROTH: Do I actually have -- yes. It's in  
11 here. It's in with the intro. At least equal to is the  
12 concept that different measures can achieve the same  
13 level of protection. It is the state where sanitary  
14 measures at State inspected establishments, though  
15 different from the measures applied in federally  
16 inspected establishments achieve, as demonstrated by the  
17 State, the Federal Government's appropriate level of  
18 sanitary protection." Some of that was taken from the  
19 equivalence documents.

20 DR. LEECH: So in short terms, the outcome  
21 is the same.

22 MS. ROTH: Yes. That's actually a very good  
23 point. When we're working through this draft of the  
24 manual, we had emphasized the outcome unless, you know,  
25 the command and control the same as.

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1 DR. LEECH: Well, I would say -- I wouldn't  
2 say at least to outcome. I would not use the word same.

3 MS. ROTH: Same. Okay.

4 DR. LEECH: I think it's just going to  
5 cause problems and I think we're better off with at  
6 least equal to in terms of outcome as the focus.

7 DR. ELFERING: This is Kevin Elfering,  
8 Minnesota. When I started thinking about this I started  
9 thinking of my own organic chemistry, structures that  
10 were cyrol or acyrol; cyrol being the mirror image and  
11 acyrol being structured the same but not a mirror image.  
12 And I think that's sort of the way that maybe we should  
13 be looking at ourselves is our goals are exactly the  
14 same, but maybe we are not going to be looking exactly  
15 alike but yet the goal is still the same. I think some  
16 states, like ours, we've adopted in our, by reference,  
17 the Code of Federal Regulations, Title 9. There's some  
18 things that we really like about Title 9, because  
19 they're easy to enforce, but there's some things that we  
20 don't like about it. One of the things is that rules  
21 crack us. I think that some of the things that we can  
22 do much better is if we have a problem with a facility,  
23 we don't have to go through all of these bureaucratic  
24 layers to have a facility removed from inspection. All  
25 it takes is me to be able to go out there and say you're

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1 done today. We'll give you an opportunity for an  
2 administrative hearing, but right now you are not going  
3 to be producing an inspected product any more. USDA  
4 doesn't have that ability. They really don't. So I  
5 think there's some things that we can do a lot better  
6 but equal to does not mean the same as.

7 DR. JOHNSON: So I like what...

8 DR. LEECH: The same or better?

9 DR. JOHNSON: No. I like what...

10 DR. ELFERING: Not necessarily better either.  
11 I'm just saying that I think that there's -- you're  
12 going to see nuances between programs that some things  
13 are going to be maybe better than others, but the end  
14 result is still the same. The plants are producing  
15 wholesome product, not adulterated, and the safety of  
16 the consumer is the idea.

17 DR. JOHNSON: Because you had mentioned the  
18 mission and the goals and you have similar missions with  
19 goals to accomplish that mission. And they may be  
20 similar to what FSIS is doing, but the means to reach  
21 those goals may be different but you can still attain  
22 the same goal, the same mission.

23 DR. ELFERING: And I can only speak for our  
24 state. But I think a lot of other state programs, we  
25 deal with very small processing plants. They don't have

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1 the technical expertise to be able to develop some of  
2 these food safety programs. So we provide them some  
3 assistance. We don't just go out and say you need to  
4 have this in your HACCP. We can't even give them some  
5 guidance in what they need to be doing with their HACCP  
6 plans, not just that they need to have an effective  
7 HACCP plan and leave it at that. We try to be more  
8 consultants. And we can always be regulated but why  
9 start out as being a regulator if you can be more of a  
10 consultant.

11 DR. JOHNSON: Mark, are you state or federal?

12 MR. SCHAD: Yeah. I'm state inspected. My  
13 name is Mark Schad, for the record, and I really  
14 appreciate what Kevin is saying. Whenever I hear the  
15 terms "at least equal to" I guess the first thing that  
16 comes up in my mind is the issue of interstate shipment  
17 of state inspected products. And I think Kevin has a  
18 lot of good points. There's a lot of things that state  
19 inspection programs can do in working with the very  
20 small plants. It hands out more of an ability just  
21 because of the way the states make the programming or  
22 structure that. And my only concern is when I hear "at  
23 least equal to" in the way Kevin is defining it, rather  
24 than "same as," when FSIS comes in to evaluate a state  
25 program, will they be able to recognize that and see

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1       that.

2                   DR. LEECH:    See.  That's where I think we get  
3       into defining each of these, which I am not sure we can  
4       sit here tonight and do that.

5                   DR. JOHNSON:   And do it.  Yeah.  That may be  
6       more question two.  I think you're right.

7                   DR. LEECH:        Yeah.  I mean I agree with you.

8                   DR. JOHNSON:    Dr. Jan.

9                   DR. JAN:     I don't know that I can add  
10       anything, except, you know, again, the outcomes and our  
11       goals and expectations for the processes we regulate...

12                   DR. JOHNSON:    Let's put goals and  
13       expectations.  I like this admission.  I like those...

14                   DR. JAN:         hat kind of key words.

15                   DR. JOHNSON:    Yeah.

16                   DR. LEESE:       Similar to mission and goals.

17                   DR. JOHNSON:    And expectation.  That's -- I'm  
18       sorry.

19                   DR. JAN:     But the expectations as regulated to  
20       what the Law says and that's anti-mortem inspection,  
21       post-mortem inspection, re-inspection and sanitation I  
22       believe is what the Law says.  Is that right?

23                   DR. LEESE:       And records and enforcement.

24                   DR. JAN:     Records and enforcement.  So if w  
25       have "equal to" in those areas like -- well, I guess

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1 it's listed in book two of what we're supposed to be  
2 doing. Well, we don't have to have the same -- again,  
3 and that's the same thing they said. We don't have to  
4 have the same but it needs to -- the outcome or the end  
5 result needs to be an unadulterated, safe product.

6 DR. LEECH: What I've written here is, "The  
7 goals, expectations and missions of state programs lead  
8 to a public safety outcome that is at least as positive  
9 as that achieved through federal programs."

10 DR. JOHNSON: Okay. I like that, except  
11 that's think of something -- let's not use at least  
12 since that's what we're defining. Let's come up with --  
13 let's write that. Can we write that out?

14 MS. ROTH: Can I just -- just from listening,  
15 it seems that there's a discussion around the table  
16 where you are unclear whether or not you want to use the  
17 words "same as" or "at least equal to." And they're  
18 quite different. Same as is a very stringent  
19 requirement. It's a very, very stringent requirement.  
20 And are some of you saying that you're in favor of using  
21 the term "same as?"

22 DR. JOHNSON: No.

23 MS. ROTH: Okay.

24 UNKNOWN: No.

25 DR. ELFERING: We want the same outcomes...

1 MS. ROTH: You're saying...

2 DR. ELFERING: ...for inspecting staff...

3 DR. LEECH: That's why I used the term at  
4 least as positive, thinking that, you know...

5 MS. ROTH: Right.

6 DR. LEECH: I was trying to say it in a  
7 different way but I don't know if that does it.

8 DR. JOHNSON: Bernie.

9 MR. SHIRE: If I can just insert something  
10 here.

11 DR. JOHNSON: Say your name.

12 MR. SHIRE: Huh?

13 DR. JOHNSON: Same your name and don't...

14 MR. SHIRE: It's Bernie Shire with AMP.

15 And I guess the question I'm raising is why -- I guess I  
16 would ask the question as to why the agency has put this  
17 question in there concerning defining what "equal to"  
18 is, because when I talk to people at USDA and I had a  
19 conversation with somebody in the legislative office,  
20 you know, earlier this evening, I was told that one of  
21 the reasons they're doing these more critical reviews,  
22 if you wanted, is because they want to make sure that  
23 all the -- we're talking about interstate shipment,  
24 which is sort of, I guess, the goal we're alluding to  
25 here. They said that basically one of the things

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1 they're looking at is -- they want to evaluate the  
2 programs as being same as rather than equal to because  
3 that's what they feel it's going to take to get  
4 interstate shipment, that the state programs are going  
5 to have to be same as rather than equal to.

6 MS. ROTH: Well, there's nothing in the  
7 Law today that talks about same as.

8 DR. LEESE: Well, I just wanted to comment  
9 if we look at the prior legislation and we're still  
10 talking about the states adopting our laws and  
11 regulations and then when you listen to other people who  
12 have commented on this, they said, not only should the  
13 states be adopting the laws and regulations, they should  
14 be adopting our memos and notices and every other  
15 conceivable thing. And if that were the case, that  
16 certainly would be the same as. And I'm not promoting  
17 this or anything. I'm just trying to state what I've  
18 seen.

19 MS. ROTH: Okay. I think that, Bernie, what  
20 you're mentioning is that there is some discussion that  
21 some part -- some individuals might require the states  
22 to be same as for interstate shipment. There is some  
23 discussion around that.

24 MR. SHIRE: In the Department?

25 MS. ROTH: No. Not in the Department.

1       Definitely not in the Department.  It's something that  
2       -- I mean you just someone in the legislative office  
3       talked about it.

4               MR. SHIRE:       Well, they -- but they work for  
5       the agency.

6               MS. ROTH: No.  But what we are charged with --  
7       it's very clear -- is to look at state programs under  
8       the criteria of "at least equal to" program.  And it's  
9       very clear that the Undersecretary and the Administrator  
10      is focusing on outcomes.  And for those of you who were  
11      at the two-day state directors' meeting, I thought it  
12      was really clear from everyone in FSIS that what we're  
13      trying to do is standardized a methodology for reviewing  
14      your programs that provide you an opportunity if you're  
15      interested in interstate shipment or if, you know,  
16      actually show that you are at least equal to.  And so we  
17      are not using anywhere in the revised review document  
18      the term "same as."  It is not there.  And that is not  
19      what we're looking at.  We're looking at "at least equal  
20      to," similar to what we've asked of the foreign  
21      countries.  We do not ask foreign countries to be same  
22      as.  We ask them to be equivalent.

23              DR. JOHNSON:   And I think we need to, for the  
24      purpose of -- recognize that there's a lot more tied up  
25      to this question than the pure question itself with the

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1 whole interstate and the whole thing. I think as a  
2 subcommittee we need to kind of keep it as pure as we  
3 can and try to define, you know, at least equal to  
4 without going down the same road that everybody else  
5 has, well, it equates to interstate and same as, equal  
6 to. Let's try to define "at least equal to" and take it  
7 out of that arena so maybe we can start people moving  
8 away. And I'd like to kind of keep -- unless the  
9 subcommittee objects -- keep the discussion to our  
10 definition here and not -- I mean I recognize it's all  
11 tied up, but because of our time constraints...

12 DR. LEECH: I also think that the principle  
13 behind it all is that states can be at a higher level.  
14 Think about budget things in general, you know, when we  
15 -- that you set -- really the critical level becomes the  
16 -- and that's not wording. But I think that's some of  
17 the premise that's behind it.

18 DR. JOHNSON: In Irene's statement up here,  
19 "The goals, expectation and mission of state programs  
20 lead to a public safety outcome that is at least as  
21 positive as that achieved through federal programs," any  
22 thoughts on that.

23 DR. ELFERING: The only thing that I would  
24 maybe add to that is the missions as being food safety.  
25 The goals, expectations and missions...

1 DR. LEECH: The food safety...

2 DR. ELFERING: ...the premise is food safety.

3 DR. LEECH: The food safety goals,  
4 expectations and missions of state programs...

5 DR. ELFERING: Um-hum.

6 DR. LEECH: Okay. That's cool.

7 DR. JOHNSON: Mark, any comment on that?

8 MR. SCHAD: Well, I've got more of a  
9 question maybe for you, Alice, as the chairperson. Is  
10 the purpose here to develop or come up with a  
11 recommendation for the methodology on how to decide  
12 whether or not a state program has the acceptable  
13 outcome?

14 DR. JOHNSON: I may -- I think that's  
15 question #2. I may be looking at this all wrong, but it  
16 looks like to me what they're asking us to day is, #1,  
17 is develop the purpose of the methodology by defining  
18 "at least equal to." And then question #2 is the  
19 criteria for each of the 10 components that they have  
20 listed down. I mean maybe I'm wrong, Mark, but yeah,  
21 that's the way I'm looking at it. But I'm looking at #1  
22 as being here's the mission, here's the purpose of these  
23 things. Is that any different than anybody else?  
24 Kevin?

25 DR. ELFERING: No. I think that -- I think

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1 you're right. My difficulty, I guess, comes in again  
2 that there's some things that we may be, as states, be  
3 doing a little bit differently. Just for an example, in  
4 Minnesota, we are testing for salmonella and lysteria on  
5 fully cooked, ready to eat products way before USDA was.  
6 When they changed their policy to start testing for both  
7 pathogens, I said it's nice to see that USDA finally has  
8 become equal to Minnesota. So you start getting into  
9 some issues of we don't want to -- we want to stay away  
10 from that I guess.

11 DR. JOHNSON: Yeah. And it's not -- I think  
12 the purpose is not to look at which system is better or  
13 which system is doing it. It's how do we determine that  
14 -- and I don't know. I like this statement and I like  
15 it in putting the food safety. But it's more than just  
16 food safety. Isn't it? I mean in your state program  
17 they're coming in and looking at economic issues as well  
18 -- aren't they -- other consumer protection issues?  
19 FSIS regulations, although they're tending to move in  
20 that direction, they're not just public health, food  
21 safety. So I think that if we look at that we're  
22 limiting the scope of what we're considering and maybe  
23 we should. But are we just considering "at least equal  
24 to" to be in those food safety arenas that would have  
25 public health outcome and maybe that's the right way to

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1 do it. I don't know.

2 DR. ELFERING: Should we maybe just change  
3 food safety to consumer safety, because consumer safety  
4 would certainly invite those economic issues?

5 DR. JAN: Yeah. But then -- I mean if you're  
6 -- I means she's got a point because if there's a  
7 standard for hamburger that's 30 percent fat, then we  
8 need to have that same standard in our state programs.  
9 And that's not food safety. That's economic or...

10 DR. JOHNSON: It would be pretty hard to...

11 DR. LEECH: I'm not even sure that's  
12 economic. That's a -- public safety is broader than  
13 food safety.

14 DR. JOHNSON: What kind -- what wording...

15 DR. LEECH: I don't know.

16 DR. JOHNSON: I think we're almost -- we're  
17 all thinking the same thing but we're not...

18 DR. LEECH: I don't know if economic is the  
19 right word. I don't know exactly the right word. I  
20 mean I agree with you but there are some things about...

21 DR. JOHNSON: Do you want to use other --  
22 food safety and other consumer protection?

23 DR. JAN: Other consumer protection. I think  
24 that's a term...

25 DR. JOHNSON: I mean that seems to be the...



1 DR. LEECH: Yeah. Yeah.

2 DR. JAN: ...that we're familiar with.

3 DR. JOHNSON: Food safety and other...

4 DR. ELFERING: The food safety and other  
5 consumer protection...

6 DR. JAN: I would rather you say the consumer  
7 protection goals and that could include food safety and  
8 other...

9 DR. JOHNSON: Put a footnote, food safety and  
10 other.

11 DR. ELFERING: I think we want to hear the  
12 word safety...

13 DR. JOHNSON: Yeah.

14 DR. ELFERING: ...some place.

15 DR. JOHNSON: Go ahead and write consumer  
16 protection. We'll think about it a little bit more if  
17 we want to -- something else that I'm sitting here  
18 thinking about from most of the people I work with now  
19 are federal plants. And what we keep talking about is  
20 tell us what outcome you want and then no more command  
21 and control, you know. And this is exactly what the  
22 states are saying it looks like to me, tell us this is  
23 the outcome we need but don't tell us how to get there.  
24 Get out of the command and control dictating business.  
25 Should we take out public safety now that we have the

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1 food safety?

2 DR. LEECH: Yeah. I don't -- we may.

3 DR. JOHNSON: To an outcome.

4 DR. LEECH: Or should we say outcomes  
5 instead of...

6 DR. JOHNSON: Yeah. Outcomes.

7 DR. LEECH: Outcomes that are...

8 DR. JOHNSON: Do we want to use the term that  
9 we're defining in it? Can we think of something else  
10 that means the same thing besides same, is at least  
11 equal to?

12 DR. LEECH: Well, I guess we could take at  
13 least out and just say, "that are as positive."

14 DR. JAN: How about the minimal food safety  
15 and other consumer protection bills of state programs  
16 lead to outcomes that are as positive that achieve to  
17 the federal programs.

18 DR. LEECH: As those we should say, right,  
19 since we have does achieve.

20 DR. JAN: Right. As those. Yeah.

21 DR. JOHNSON: Mark, any thoughts other than  
22 getting the grammar right. I don't know how to do that.

23 MR. SCHAD: I was just thinking of a word  
24 to use instead of that word positive.

25 DR. JOHNSON: Okay. Kevin's...

1 MR. KENT: Almost like right now it's negative.

2 DR. JOHNSON: That are as effective as those  
3 -- lead to outcomes that are as effective as...

4 DR. LEECH: Well, it may still be -- I  
5 don't know what -- I'm trying to think of something  
6 measurable.

7 DR. JOHNSON: Yeah.

8 DR. LEECH: Positive measurable. I didn't  
9 mean that.

10 DR. JOHNSON: USDA uses "is adequate" a lot,  
11 but still, how to you measure adequate?

12 DR. LEECH: Effective is better than  
13 adequate.

14 DR. JOHNSON: Yeah.

15 MR. KENT: It seems to me that you're getting  
16 into what represents effective in question two, each of  
17 the components.

18 DR. LEECH: Yes. Yes. Whatever we --  
19 yeah. Whatever word we put there, I agree with you,  
20 it's...

21 DR. JOHNSON: Yeah.

22 DR. LEECH: Either...

23 DR. JOHNSON: So maybe we should reference --  
24 that's a good idea -- as effective as those achieved  
25 through federal programs defined by the following

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1 criteria, which would lead us to...

2 DR. JAN: And I think that's the simple thing.  
3 Let's use the same criteria that FSIS uses to evaluated  
4 their program. And then that's equal to -- whatever  
5 criteria that FSIS uses and how often they do any  
6 reviews.

7 MR. HICKS: Alice, when I read the phrase  
8 "at least equal to" to me it assumes that it could be  
9 better.

10 DR. LEECH: Right.

11 MR. HICKS: When I read as effective as I  
12 don't get that same feeling.

13 DR. JOHNSON: But it's a...

14 MR. HICKS: I just want to point that out.

15 DR. JOHNSON: Yeah. And that's what we -- I  
16 think we were talking about that a little bit. But at  
17 the same...

18 DR. LEECH: That's right. We said a  
19 minimal. Didn't we?

20 DR. JAN: Yeah. We said the minimal food  
21 safety and other consumer protection goals, expectations  
22 and et cetera, et cetera. We said the minimal standards  
23 that we want to...

24 DR. LEECH: But we took out -- when we took  
25 out at least we lost that. He's right.

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1 DR. JAN: So you put the minimal back in.

2 MR. HICKS: I'm responding to Dr.  
3 Elfering's comment earlier today and the one you're  
4 making right now...

5 DR. LEECH: Yeah.

6 MR. HICKS: ...is that consumers don't want  
7 to be just as good as. We want to be better.

8 DR. JOHNSON: Well, does that...

9 MR. HICKS: We are better...

10 DR. JOHNSON: ...and...

11 MR. HICKS: ...and at least equal to just  
12 says that to me. I don't know.

13 DR. LEECH: But is effective or better?

14 DR. JOHNSON: But is that really something  
15 that we're trying to evaluate with this?

16 DR. JAN: No. We're just -- right.

17 DR. JOHNSON: And a lot of state programs  
18 will be better, but is that something necessarily that  
19 the methodology would address? There's a standard that  
20 you have to meet in the methodology and if you're better  
21 than, then you've met the standard.

22 DR. JAN: Right.

23 DR. ELFERING: I will never say that we are  
24 better than them. I would never say that on an across  
25 the board program nor for each individual state. I

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1 think we want to be similar in the sense that we're  
2 achieving the same goals. If we're better in one area,  
3 that's to our credit just only for our particular  
4 program.

5 MR. SCHAD: We don't get any bonus points.

6 DR. ELFERING: No.

7 UNKNOWN: Kevin, you're saying you don't have  
8 to pound your chest or anything.

9 DR. ELFERING: If we want to still use some of  
10 the old command and control things and sometimes the  
11 industry wants that...

12 DR. JOHNSON: Yeah.

13 DR. ELFERING: ...then -- and if that makes us  
14 better in that small, little narrow part, so be it. But  
15 I don't want to be looking at one of us as a better  
16 agency than the other.

17 DR. JOHNSON: Yeah. I think that gets us  
18 into.

19 MS. ROTH: Can I ask a question? You have in  
20 the beginning of the sentence, you say goals,  
21 expectations and missions. Why do you have all three of  
22 those there and are they the correct words?

23 DR. LEECH: I just thought they sounded  
24 good.

25 MS. ROTH: Yeah.

1 DR. LEECH: They sound pretty. Don't they?

2 MS. ROTH: I just -- the question you're  
3 answering is what does at least equal to mean with  
4 regards to a state program -- state program  
5 requirements.

6 DR. LEECH: You're right.

7 MS. ROTH: And expectation, you know -- I mean  
8 that's sort of ideas. And then you've goals and  
9 missions, which a lot of people use synonymously. So  
10 what I'm saying is do all three belong there? Do any of  
11 them belong there or what might you substitute?

12 DR. LEECH: We assume there that they and  
13 everything else and just need to pick it up with state  
14 programs lead to outcomes...

15 DR. JAN: How about the implementation of  
16 state programs lead to outcomes that are...

17 DR. LEECH: As effective or valid. Do we  
18 dare say that?

19 DR. JOHNSON: Let's -- I like the fact that  
20 maybe we have a little narrative because I like the fact  
21 that everybody has the same goals, mission and goals to  
22 achieve that mission. Those goals are based, I'm going  
23 to say, on food safety. And then maybe it's the state  
24 implementation that we get into. But I like emphasizing  
25 that the mission between the federal and the state

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1 regulatory agencies are the same to protect the public  
2 health.

3 MS. ROTH: Again, there's a balance between us  
4 sort of sitting here quietly and interjecting. I think  
5 it's good to read the question and you need to remember  
6 that both the FMIA and PPIA require more than -- they  
7 emphasize and focus more than simply on food safety. We  
8 have the economic adulteration and...

9 DR. JOHNSON: Correct.

10 MS. ROTH: ...the -- so I just mention that.  
11 And also, if you look at the 10 components, there's  
12 clearly the other requirements.

13 DR. JOHNSON: Yeah. And that's what we've  
14 got...

15 MS. ROTH: So...

16 DR. JOHNSON: ...food safety and other  
17 consumer protection.

18 MS. ROTH: Right. I'm -- yeah.

19 DR. JOHNSON: So -- all right. Do we want to  
20 reword or...

21 DR. LEECH: I wonder, Alice, if what she's  
22 saying is that those things are kind of a given that we  
23 know are there and are going to be there and that we may  
24 be limited even by putting things there that we have.  
25 All our assignment is really is to define that at least

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1 as and then it's going to be applied to everything. I  
2 don't know. I mean I agree with you, but for the  
3 purposes of this document do we need all those words I  
4 guess is going to be my question, because this is a part  
5 of something? This isn't a stand-alone as I understand  
6 it.

7 DR. ELFERING: What about this? The food  
8 safety and other consumer protection mission of state  
9 programs ensure outcomes that are at least equal to  
10 those achieved through federal programs as defined by  
11 the Federal Meat Products Inspection Act and Poultry  
12 Product Inspection Act.

13 DR. LEECH: I'm not sure you need to say  
14 those Acts because we've got the whole list of criteria.

15 DR. ELFERING: Or just respect...

16 DR. LEECH: ...and there it's broadened.  
17 It says statutory authority and regulations in #1. So  
18 we're going to get -- have to get into that.

19 DR. JOHNSON: Yeah. And is there anything in  
20 the Federal Meat and Poultry Acts that would be  
21 different legislation in the state? I don't know. No?

22 DR. ELFERING: I think all of us already adopt  
23 the Acts.

24 DR. LEECH: Okay.

25 DR. ELFERING: We already adopt the Meat

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1 Products Inspection Act and Poultry Products Inspection  
2 Act, if we have the poultry program. It's the  
3 regulations that are not necessarily adopted. But at  
4 least we adopt the federal tax.

5 DR. JOHNSON: Yeah. That's what I'm trying  
6 to get. The mission is the same regardless.

7 DR. LEECH: But isn't that what we're going  
8 to have to address in #1 where it says statutory  
9 authority?

10 DR. JOHNSON: Yeah. That may be.

11 DR. LEECH: We're looking at outcomes in  
12 that -- I mean I don't know how we're going to define  
13 all these, but I think the statutory authority is going  
14 to be, we will say...

15 DR. JOHNSON: Part of that.

16 DR. LEECH: ...they have adopted -- I think  
17 -- I don't want to say we do...

18 DR. JOHNSON: Okay. I'll tell you what. Why  
19 don't we put that somewhere and come back to it?

20 DR. LEECH: But what if we did on the front  
21 of that statement...

22 DR. JAN: Yeah.

23 DR. LEECH: I mean...

24 DR. ELFERING: All right. For you to rewrite  
25 it or...

1 DR. JAN: You can't. And I don't think you  
2 can read it.

3 DR. ELFERING: I'll rewrite it.

4 DR. LEECH: Okay.

5 DR. JOHNSON: Let's put that one over here  
6 and rewrite it and then we'll start talking because  
7 maybe if we go to question two it will make question one  
8 come...

9 DR. LEECH: Yeah. Maybe we can clarify  
10 that and have less words.

11 DR. JOHNSON: Okay. The 10 review  
12 components, #1, statutory authority and food safety  
13 regulations, and Kevin, you're saying that all the  
14 states should generally have recognized the statutory  
15 authority without the regulation.

16 DR. JAN: Bill, were you going to...

17 DR. LEESE: Well, I'm not aware of any  
18 state that has adopted our Statute. But many, many  
19 states have adopted most of the components of the  
20 regulation.

21 DR. ELFERING: Don't they make reference  
22 though to the Meat Products Inspection Act? In their  
23 statutory authority do they already -- we were referred  
24 to the Meat Products Inspection Act and Poultry Products  
25 Inspection Act in our statutes.

1 DR. LEESE: But you don't state that you've  
2 adopted it. Do you?

3 DR. JOHNSON: Dr. Leese...

4 DR. ELFERING: Not that we've adopted it.

5 DR. JOHNSON: ...why don't you come to the  
6 table and talk?

7 DR. LEECH: That would help him a whole  
8 lot.

9 DR. LEESE: Most every state has listed by  
10 chapter and verse those components of the regulations  
11 that they adopt, including -- there were some parts that  
12 wouldn't make any sense for them to adopt. But they've  
13 listed them, each one, right down all the way through.

14 DR. JOHNSON: But do they reference in some  
15 sort of state legislation the Meat and Poultry?

16 DR. ELFERING: I can only speak for Ohio. And  
17 what I've read from the Ohio statutory requirements,  
18 what they do is they take the language from that.

19 DR. JOHNSON: From the Act.

20 DR. ELFERING: And then they'll plug in the  
21 word like instead of secretary of Agriculture, they'll  
22 put in director of Agriculture.

23 DR. JOHNSON: Right. Whatever is appropriate  
24 for them.

25 DR. LEESE: So in effect it would...

1

\*\*\*

2

[Off the record.]

3

[On the record.]

4

\*\*\*

5

6

DR. JOHNSON: ...criteria for evaluating a state's statutory authority would be referenced to Meat and Poultry Act. What's the word that would talk about what we were just talking about?

10

DR. JAN: Address the anti-mortem, post-mortem reinspection and sanitation in the Act. I mean there are things in the Act -- in the Federal Act that we don't adopt. We don't adopt the provision to help the state programs. You know that's in -- there's different titles.

16

DR. LEESE: Well, that's in Title 3 so...

17

DR. JAN: So we have to -- we would...

18

DR. JOHNSON: Okay.

19

DR. LEESE: ...1, 2 and 4.

20

DR. JAN: Yeah.

21

DR. LEESE: The ones that are referenced in Title 3 they make reference to 1, 2 and 4 as far as the adopting.

24

DR. LEECH: Okay. So what are the proper words to explain? I think we understand what's going on

25

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1 here. What are the legal words to explain what happens?  
2 Do I need to call an attorney on those? Legislative --  
3 I mean because it is a matter of -- I mean...

4 DR. JOHNSON: You take the like the  
5 appropriate...

6 DR. LEECH: We take the guts that are  
7 appropriate before we...

8 DR. JOHNSON: Yeah. Appropriate for the  
9 state.

10 DR. LEECH: I don't know the right words  
11 but I can make a phone call tonight.

12 DR. JOHNSON: Should we reference anti-  
13 mortem? Should we say that and other codes of that as  
14 appropriate?

15 \*\*\*

16 [Too many people talking at the same time.]

17 \*\*\*

18

19 MR. SHIRE: You adopt the sections of the  
20 FMIA and PPIA pertaining to anti-mortem, post-mortem  
21 inspection and whatever else.

22 DR. LEESE: Re-inspection and I don't know  
23 -- what...

24 MR. SHIRE: And yeah.

25 DR. LEESE: Well, the reinspection and

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1 record keeping, but it's Titles 1, 2 and 4.

2 MR. SHIRE: So we...

3 DR. LEESE: And probably not every  
4 conceivable thing because obviously there would be  
5 wording that relates to federal that wouldn't be  
6 relevant for state.

7 MR. SCHAD: The appropriate...

8 DR. ELFERING: That's the word I was thinking  
9 of but wording, but that's too vague.

10 MR. SCHAD: The language as appropriate.  
11 Is that too vague?

12 DR. LEECH: The language that applies.

13 MR. SCHAD: Or as relevant. As relevant?

14 DR. LEE: Or just say adopted portions or the  
15 relevant portions of Title 1, 2 and 4 that allows the  
16 state to meet that equal to definition.

17 DR. LEECH: Mr. Kent, can we just say adopt  
18 the relevant portions of 1, 2 and 8, but not add the  
19 other parts?

20 DR. JOHNSON: Appropriate sections of the  
21 FMIA, PPIA, all those wonderful...

22 DR. LEECH: Yeah.

23 DR. JAN: There's two of them. Yeah.

24 DR. JOHNSON: Yeah. All those wonderful  
25 initials. Relevant. Relevant.

1 DR. JAN: You have the same sections. Right?

2 DR. LEECH: The simpler we can make this...

3 DR. JOHNSON: You got it, Doug. We're just  
4 going off. I'm sorry. I'm not helping. Adopt the  
5 relevant section.

6 DR. LEECH: We thought you had it  
7 memorized.

8 DR. JOHNSON: Hold on now. We're talking the  
9 Acts. We're talking the legislative part that resulted  
10 in all these regulations. Right?

11 DR. JAN: Right.

12 DR. JOHNSON: So Doug, read what you got.

13 MR. KENT: Adopt the relevant sections of...

14 DR. JOHNSON: FMIA, PPIA, all that good  
15 stuff.

16 DR. LEESE: Federal Meat Inspection Act and  
17 the Poultry Products Inspection Act.

18 MR. KENT: Okay.

19 DR. JOHNSON: And that's basically -- that  
20 will be the criteria...

21 MR. KENT: Pertaining to that -- pertaining to  
22 the anti-mortem, post-mortem inspection, re-inspection  
23 record keeping...

24 DR. LEESE: Well, if we adopt 1, 2 and 4,  
25 then that...



1 MR. KENT: That's included.

2 DR. LEESE: ...covers...

3 MR. KENT: Well, 1, 2 and 4 for red meat. For  
4 poultry...

5 DR. LEESE: Yeah. That's a different...

6 MR. KENT: ...that's a whole other series of  
7 names and my orientation is basically the red meat so I  
8 haven't memorized the others.

9 DR. JOHNSON: Poultry discrimination. Is it  
10 because we're turkeys?

11 MR. KENT: No. Actually what it is is...

12 DR. ELFERING: He always says he works with  
13 turkeys.

14 MR. KENT: It's easier to remember 1, 2 and 4  
15 than it is the other numbers are bigger numbers for my  
16 little mind to keep track of.

17 DR. LEECH: That may be necessary down the  
18 road.

19 DR. LEESE: Take out the relevant sections  
20 and allow you to be equal to...

21 MR. KENT: To accomplish the mission or  
22 something like that.

23 DR. JOHNSON: Right.

24 DR. LEECH: Yeah.

25 DR. JOHNSON: To accomplish mission...

1 DR. ELFERING: To achieve being equal to.

2 DR. LEESE: Now, do you want that  
3 independent of regulations, because whether or not it's  
4 the best way to do things, some states adopt our laws by  
5 way of adopting our regulation that came from our law so  
6 that their law might be missing something that our law  
7 has but it's covered by virtue of adopting our  
8 regulations.

9 DR. JOHNSON: But yeah, I think relevant  
10 would cover...

11 DR. LEECH: The law or regulation. Should  
12 we just say by adopting the law or the regulations?

13 DR. JOHNSON: We can't say regulations  
14 because that gets in to being just taking the federal  
15 regs and putting them in place in the state. Wouldn't  
16 it? We want that kind of flexibility.

17 UNKNOWN: Some do that.

18 DR. JOHNSON: I know. I know. But that's  
19 not something that should be a definite criteria. If  
20 they choose to do it...

21 DR. LEECH: At this process...

22 MR. KENT: Unless you just have relevant...

23 DR. LEECH: I didn't make it a requirement,  
24 but I said...

25 DR. JAN: Well, yeah. Adopting

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1 regulations -- federal regulations or regulations that  
2 allow the accomplishment of...

3 DR. ELFERING: Unless you just wanted to put  
4 relevant components.

5 DR. JAN: The outcome. The outcome is...

6 DR. JOHNSON: Yeah. Are we getting into  
7 regulations dictate the outcome?

8 DR. ELFERING: But if you put relevant  
9 component...

10 DR. JOHNSON: Or how to achieve the outcome.

11 DR. ELFERING: ...component sections...

12 DR. LEECH: I agree with you. Right.  
13 Relevant component.

14 DR. ELFERING: ...then you can do it either  
15 way, either by adoption of Statute or the regulations.

16 DR. JOHNSON: But now, in legal terms -- help  
17 me here -- but if we talk about relevant component  
18 sections of the Act and of the Acts, then we haven't  
19 included the regulations...

20 DR. LEECH: Of the Acts...

21 DR. JOHNSON: ...because the regulations are  
22 subject of the Acts.

23 DR. LEECH: ...or regulations?

24 DR. JOHNSON: Yeah. We'd have to put or.

25 DR. JAN: FMIA, PPIA and/or -- could be both

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1 actually.

2 DR. LEECH: Yeah. So then we'll do and/or.

3 DR. JOHNSON: And that would mean you  
4 wouldn't necessarily have to have the regulations.

5 DR. JAN: I don't know how other states  
6 -- but I know in our state you can't have a regulation  
7 without a law giving you the authority to have that.  
8 Now, some laws might -- some states may take the  
9 regulations and adopt that as their Law. I don't know.  
10 But I know for our state, we had a law. It was not the  
11 federal law but it's a meat and poultry inspection. We  
12 got one Act, not two. But it basically pulls it  
13 together. Makes it look like the Meat Act but throws in  
14 poultry so the poultry requirements are met and then  
15 that gives us the authority and it tells us to adopt the  
16 federal regulations. So even though the some -- if you  
17 put them side by side, it wouldn't be just taking a word  
18 out and taking secretary out and putting in director.  
19 There's different things in there. But as an example,  
20 our act only allows exemption for personal use or it  
21 did. Where the federal allows part exemptions from  
22 inspection for retail, for religious or certain amounts  
23 of poultry and all those different things. Ours didn't  
24 allow all that. But we've had to amend the changes.

25 DR. JOHNSON: Okay. So if we're looking at

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1 the criteria that would be used to -- let me be sure I'm  
2 doing this right -- what are the criteria FSIS should  
3 use for evaluating if a state program is at least equal  
4 to with regard to statutory authority and food safety  
5 regulations. We're saying that criteria should be that  
6 the state has adopted relevant component sections of the  
7 Acts and/or the appropriate regulations. So that's the  
8 criteria that we're establishing.

9 DR. LEECH: Good job.

10 DR. JOHNSON: Good? All right. Oh, boy.  
11 This one's going to be fun. What are the criteria FSIS  
12 should use for evaluating a state's program to determine  
13 that it's at least equal to with regard to inspections?  
14 Mark, do you have...

15 MR. SCHAD: Why are you looking at me,  
16 Alice?

17 DR. JOHNSON: Any idea? Mark, any idea?

18 DR. ELFERING: I think one of the difficulties  
19 with trying to do that is whether or not FSIS is willing  
20 to admit that they probably don't have the frequency of  
21 inspection that they claim to. And I have been told by  
22 people with FSIS at very reliable sources that they  
23 don't inspect their plants every day. But yet,  
24 sometimes state programs are criticized for not  
25 inspecting our plants every day. And we've got some

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1 pretty low volume plants. I mean we have some plants  
2 that are producing 200 pounds of beef jerky a day. And  
3 if we're not inspecting those each and every day that  
4 they're producing product, a very low risk product, I  
5 don't think that we should be criticizing. I think that  
6 USDA should recognize that probably they would not be  
7 inspecting those facilities every day either. So I  
8 think, first of all, what truly does USDA -- what does  
9 FSIS do when they're conducting their inspections? Are  
10 they in their plants absolutely every day that they're  
11 operational? And I think -- I have been told by  
12 district managers that absolutely they are. And I have  
13 been told by people in headquarters that absolutely  
14 they're not. And those are some of the things that we  
15 need to establish. How do we meet standards when the  
16 standard really hasn't been established?

17 DR. JOHNSON: When the frequency isn't -- and  
18 I'm not sure that this deals strictly with frequency as  
19 much as frequency and being able to detect deficiencies.  
20 So what is it that we in the state programs, independent  
21 of what FSIS is looking at with regard to inspection,  
22 risked based? I think we've all got to be realistic.  
23 That's where everybody has to go, you know. High risk  
24 products need appropriate frequency for risk based, but  
25 with regard to inspection, what is it when you send your

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1       guys out into these plants, what are they inspecting  
2       for?

3               MR. SCHAD:       And shouldn't it also be based  
4       on the plant's performance?

5               DR. JOHNSON:    Based on the...

6               MR. SCHAD:       Say if a plant has been getting  
7       negatives on their product samples for years, they  
8       should be inspected less frequently than a plant that  
9       has a positive. Not only on the product, but on the  
10      plant's performance. The plant might be producing what  
11      is considered a high-risk product but does a very good  
12      job in doing that.

13              DR. JOHNSON:    Dr. Jan, why do you send  
14      inspectors into your plant -- into your state plant?

15              DR. JAN:       So they earn their living. Why?  
16      Because that's -- I mean we need to provide inspection  
17      and...

18              DR. JOHNSON:    That's really not why we're...

19              DR. JAN:       I mean they're...

20              DR. JOHNSON:    Yeah. But that's not -- it's  
21      the outcome. Right? So what is it that you guys are  
22      inspecting? It may not be the law that they go in every  
23      day.

24              DR. JAN:       In the outcome we just determined  
25      before -- and this is -- we've got documents that state

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1 records worked on and we've got documents that FSIS has  
2 worked on. Under inspections, one of the outcomes -- or  
3 the outcome from the first document is the desired  
4 outcome of the standards and inspection system that  
5 ensures production only of safe, wholesome and properly  
6 marked and labeled meat and poultry products.

7 DR. JOHNSON: I think that's what you're --  
8 the inspection is truly to give you verification that  
9 the plant is doing that. Right?

10 DR. LEECH: That's the outcome.

11 DR. JOHNSON: Okay.

12 DR. LEECH: So you can hand him that piece  
13 of paper and he can write it up then.

14 DR. JOHNSON: And it doesn't matter. I don't  
15 think frequency really shouldn't make a difference as  
16 long as you have a level of confidence...

17 DR. LEECH: Right.

18 DR. JOHNSON: ...that the plant is doing  
19 that. And maybe based on history, it may be that you're  
20 standing there every minute or you know you go in once a  
21 week and know it's okay.

22 DR. ELFERING: I think we have two different  
23 sections to look at, though, is anti-mortem and post-  
24 mortem inspection as opposed to process.

25 DR. JAN: Here's what we also said regarding

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1 frequency. "Frequency of tests in each plant is  
2 determined by a system that establishes priorities in  
3 consideration of kind of operation that's conducted,  
4 volume of product produced and past inspection results.  
5 In plant inspection tasks are conducted daily during  
6 plant operations. Tasks are consistent with FSIS  
7 inspection tasks as set for in the current edition of  
8 FSIS regulatory process HACCP inspection guide." That's  
9 what -- this is the document that state directors and  
10 Ralph Stafko...

11 DR. JOHNSON: Put together.

12 DR. JAN: ...put together. And then the  
13 document...

14 DR. JOHNSON: All right. Let's get the  
15 definition of inspection and then talk about frequency.

16 DR. JAN: Well, then they've got criteria  
17 here, too, that you may want to hear.

18 DR. JOHNSON: Okay.

19 DR. JAN: Criteria that FSIS put forth is at  
20 least equal to means that state has taken one of the  
21 following actions; adopted by references and implemented  
22 by the regulations, program, policies and practices,"  
23 which I think we agreed to strike that in that meeting.  
24 Didn't we? I'm not sure.

25 DR. LEECH: You're in an earlier version

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1       that...

2                   DR. JAN:    I'm looking at the one, yeah, that  
3       you gave us...

4                   DR. LEECH:       There have been major  
5       revisions.

6                   DR. JAN:    So there's revisions to that.  But I  
7       -- I mean, I'm thinking here we're sitting and trying to  
8       do a third version of what's already been done.

9                   DR. LEECH:       Yeah.

10                  DR. JAN:    I mean we -- the Ralph Stafko  
11       document that we have has 10 -- I think has nine -- or  
12       nine or 10 and the FSIS document had the 10.  And for us  
13       to sit here and start from scratch without referring to  
14       those things, I think we're just wasting our times  
15       and...

16                  DR. JOHNSON:    When was that done, Lee?

17                  DR. JAN:    Well, they're still actually working  
18       on the...

19                  MS. ROTH:    The manual that Lee has is the  
20       second version that was shared with the states.  Is that  
21       correct?

22                  DR. JAN:    Right.  Right.

23                  MS. ROTH:    And so since that, which was earlier  
24       this month, the June meeting, staff have been working --  
25       one of my staff has been working full-time revising that

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1 as well as with other program areas. So it is a  
2 significant difference of what we have in front of you.

3 DR. JAN: And there was input from all the  
4 state directors.

5 MS. ROTH: That's correct.

6 DR. JAN: And I think for this group that now  
7 includes industry and consumers and others, you need to  
8 see that rather than us as a smaller group try to create  
9 something in two hours that's supposed to tell you what  
10 you, you know -- what you've already done. I think  
11 we're just wasting and trying to reinvent the wheel.  
12 And we really need to take this document -- the file  
13 document you got -- and get it to the committee. Of  
14 course, that's going to mean another time or let's just  
15 go forward -- I think we've already looked at it -- this  
16 is the third...

17 MS. ROTH: You're getting another one July 7.

18 DR. JAN: Yeah. But I'm talking about this --  
19 this Committee...

20 MS. ROTH: Correct.

21 DR. JAN: ...this is the third meeting in a  
22 row that we're considering this same topic and we're  
23 only talking about five percent of the meat produced in  
24 the United States and we're spending that much time. I  
25 think let's just move forward and say the criteria

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1 should be the same criteria as established for the  
2 federal plants. And then we'll use the documents that  
3 we all agreed to as far as the new guide to do that. I  
4 also think this subcommittee should come out and say  
5 that for the purposes of the Farm Bill that we go to the  
6 recommendations of the Committee -- of this subcommittee  
7 to use the data and information we already had and then  
8 you wouldn't be on a time crunch to get this new method.  
9 I'm not arguing that we need -- don't need a new method.  
10 But I'm not sure that we need a new method by October.  
11 The Farm Bill only says report to the secretary on the  
12 condition of the state programs and they need and you  
13 got -- and this subcommittee said use the report from  
14 2000. You had 27 -- every state review used those data  
15 to formulate the report to Congress for the purposes of  
16 the Farm Bill and then move forward on the rest of it  
17 and that can be developed as a separate process.

18 DR. JOHNSON: Okay. I hear a couple things  
19 that I do think we definitely need to see if the  
20 Subcommittee is comfortable making the recommendations.  
21 Doug, this is totally different from anything else. So  
22 let's flip a new chart. The first thing I hear you say  
23 is that number one, if the Subcommittee is given this  
24 task, we need to be given all the relevant information  
25 because we should probably be considering what's already

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1       been done.

2                   DR. JAN:   Why waste that work?   Right.

3                   DR. JOHNSON:   But we should -- you know,  
4       because that would help, you know -- maybe we need to  
5       think about it and talk about it, but it would be nice  
6       to have the documents that have been previously done.  
7       Now, the Subcommittee needs all the information and not  
8       kind of have the committees working in the dark.

9                   DR. JAN:   Yeah.   They've done a lot of good  
10       work and so has Ralph Stafko, you know.   And I think  
11       there's a lot of good work already done.   And I just  
12       don't think we can...

13                   DR. JOHNSON:   All right.   Is everybody  
14       comfortable with me saying that tomorrow?

15                   DR. ELFERING:   And I think one of the things  
16       -- and I wasn't part of this group -- but from my  
17       understanding, the document that we worked on from the  
18       state directors with Ralph Stafko was endorsed by this  
19       same group previously.   And I think that...

20                   UNKNOWN:   Of the advisory committee?

21                   DR. JOHNSON:   The subcommittee.

22                   DR. LEECH:       Has any of the consumer  
23       committees seen it?

24                   DR. ELFERING:   Yes.

25                   DR. JAN:   That was available at our last

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1 meeting, I think, and it was in the package.

2 DR. LEECH: Okay. So it's the thing that  
3 we -- I mean I've got my notebook from last...

4 DR. JAN: I think you can find it in that  
5 notebook from last...

6 DR. LEECH: I did find one and I didn't  
7 know whether that was still...

8 DR. JOHNSON: But you've gotten updated  
9 information that you did.

10 DR. JAN: Not on that one that we approved...

11 DR. JOHNSON: Okay.

12 DR. JAN: ...that subcommittee. The one that  
13 you've got in there probably has an October...

14 DR. LEECH: Yes.

15 DR. JAN: ...2000...

16 DR. LEECH: Right. That's the one I've  
17 got.

18 DR. JAN: Okay. That's the one that we  
19 considered and it hasn't been changed since the  
20 Subcommittee considered it. Since that time, FSIS has  
21 come out with this book -- I mean from here to here.

22 DR. JOHNSON: With this manual.

23 DR. JAN: Now, they're -- huh? This...

24 DR. JOHNSON: Now, that manual is your state  
25 manual. But we've all...

1 DR. JAN: No. No. This is what they created  
2 for us to replace this.

3 DR. JOHNSON: But it's given -- it was -- the  
4 subcommittee doesn't have a copy of that.

5 DR. JAN: No. No.

6 DR. JOHNSON: That's strictly...

7 DR. JAN: Right. The subcommittee does not.  
8 And as you've said, they've done a lot of work on that  
9 to trim it down. And based on a week meeting that we  
10 had the first of June -- and they're still working on  
11 that -- my point is we've already, as a subcommittee,  
12 blessed this, brought it to the whole committee and they  
13 all agreed that this is the way we should go and went  
14 with the -- I mean agreed to the recommendation. Now,  
15 the secretary doesn't have to take a recommendation.  
16 But if it doesn't want to take a recommendation why have  
17 us?

18 DR. JOHNSON: Okay.

19 DR. LEECH: Can I just...

20 DR. JOHNSON: Well, hold on just a minute.

21 And again, I think there's two different recommendations  
22 that we want to come out of the committee. The first  
23 one is if we have this question, then let's see the work  
24 that's already been done. The second one is what  
25 happened to the original recommendations, which are in

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1 here. We talked about recommend that FSIS look back,  
2 you know. Have they done that? What have they done?  
3 And now we're kind of reinventing the wheel. So I here  
4 there's two separate things here, you know. The first  
5 one may be what happened, why are we doing this again  
6 when it's already been done. The second one is if we're  
7 getting more specific and into specific wording why  
8 don't -- why was the whole subcommittee not given all  
9 the information? In the past, you guys have given out  
10 draft directives and things to review. Now, is that --  
11 how does the committee feel about that?

12 MR. SCHAD: Well, my only concern is is  
13 this going to hold up the state review process?

14 DR. JAN: Well, I'm saying let's go back to  
15 what...

16 DR. LEECH: No.

17 DR. JAN: ...we recommended last time.

18 DR. LEECH: Right. He's saying keep  
19 moving.

20 MR. SCHAD: Okay. As long as we keep  
21 moving.

22 DR. JAN: The last time we recommended to use  
23 the data, we heard today that all 27 states have been  
24 reviewed that had programs -- been reviewed since 2000.  
25 This committee recommended that we use that data to

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1 formulate the report to Congress. Do that to take care  
2 of that part. And then if the interstate shipment is  
3 going to be considered and not -- Congress can do what  
4 they want at that point. We still need to look at how  
5 are we going to review...

6 DR. JOHNSON: What's the...

7 DR. JAN: ...in the future. But rather than  
8 saying we need to do this by October so that they can  
9 get out and review and have this data on these new  
10 reviews to make a new report and you take -- you can't  
11 do 28 states by -- he said February. I was thinking  
12 by...

13 MS. ROTH: No. No. No. No. That was  
14 misunderstood. We are definitely not doing 28 states.

15 DR. JAN: I know. I know.

16 MS. ROTH: There's a small number of states.

17 DR. JAN: You've got a small number. But now  
18 you're going to take a small number -- you already have  
19 all 27. Now, you're going to take a small number to  
20 say, okay, this small number represents all the states.  
21 And I just don't see how you can do that.

22 DR. JOHNSON: Okay.

23 MS. ROTH: I'm not going to say -- I mean we're  
24 here as experts. I'm not going to tell -- say you  
25 should or shouldn't do that. What I do -- what I will

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1 say is that what Lee has just expressed has been  
2 expressed and made by the state directors and in June of  
3 the two-date, you know, meeting. And the response that  
4 has been given is that everything from the document that  
5 was worked on by the state directors with Ralph,  
6 whatever we felt we could use was taken from that  
7 document and used for the new review manual. So it was  
8 not thrown away. There is misunderstandings, depending  
9 upon who you speak to, on what the purpose of the  
10 "Stafko" document was. That document is a -- if you  
11 want to say -- I would say sort of a conceptual piece.  
12 It is not anything like the manual that is being  
13 drafted, which is very operational and more  
14 standardized. I will also say that a decision was made  
15 not to give you the Stafko document because it does not  
16 mirror, if you want to say, the 10 components. And we  
17 felt that it would be better at this point to have new  
18 eyes look at the issue and to move forward from there.  
19 And the state directors will have an opportunity July 7  
20 to look at what we've done. It is useful we felt, at  
21 this point, to have people with different perspectives  
22 come at this question to help us move forward. So I  
23 just wanted to lay out some of that...

24 DR. JOHNSON: Independent of the Stafko  
25 document there is a draft manual that's already out

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1           there, correct, that the states...

2                   MS. ROTH:           Oh, yes. The states have --  
3           but it's...

4                   MR. SCHAD:           Being revised again.

5                   MS. ROTH:           Right. It's a constant work in  
6           progress.

7                   DR. JOHNSON:       Well, that would -- I think  
8           based on -- I understand Stafko document was a concept  
9           and now we're taking this concept and we're putting  
10          specific criteria to the concept.

11                   MS. ROTH: And you can make that -- the  
12          decision was made not to distribute it. Okay.

13                   DR. JOHNSON:       Okay. But that's...

14                   MS. ROTH: For various reasons. And it's fine  
15          to say what you want. The other thing is when Ron and I  
16          were speaking we tried to address the recommendations  
17          that the two previous subcommittees made, you know, when  
18          we spoke. And actually, those recommendations, to a  
19          large extent, have already been incorporated into the  
20          review document, Lee. I mean there's a lot of comments,  
21          I think, in both sessions that were made about training  
22          and that the federal government should open up training  
23          that has been dicussed. I think there's talk about  
24          guidance material, you know, Homeland Security being  
25          operative. I would say all of those I would have an

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1 answer to, you know, in how we are addressing them. So  
2 what I think the administrator has made clear and the  
3 Undersecretary is that if the state programs are  
4 interested in interstate shipment that there needs to be  
5 comprehensive reviews that convince Congress and  
6 consumers and others that the state programs are at  
7 least equal to. FSIS is working with the states in  
8 this. We are not fighting with the states. And I --  
9 and you know, I'm just going to say that I think to keep  
10 it moving you can make, you know, whatever comments you  
11 want, but the more you can help us to get criteria that  
12 the state programs would feel comfortable with so that  
13 we're focusing on outcomes, we're acknowledging "at  
14 least equal to," not "same as," the better off you will  
15 be. You know it's...

16 MR. SCHAD: So any comments or input we can  
17 have for the subcommittee tonight so much the better.

18 MS. ROTH: So much the better.

19 DR. LEECH: If we can't figure out what a  
20 good outcome is for some of these things in the time  
21 we've got...

22 MS. ROTH: We are moving ahead. The state  
23 directors get a draft July 7. They'll email it to you.  
24 I mean, you know, make the comments on the draft if you  
25 want. What I'm saying is the state directors have

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1 cleared their voice. They've pounded on the table.  
2 They've done their thing saying that they have  
3 objections. Those objections have been heard. You can  
4 make those objections too. But I think that...

5 DR. JAN: They're not foreign to us. Not that  
6 they we have to use the Stafko because I know you've  
7 said that some of the things from Stafko are used. But  
8 if the work is already done here and then we're supposed  
9 to look independent and try to come up with -- you know,  
10 we may be up on a complete different track and we only  
11 have two options to do that. We've got 10 things to  
12 look at. And I mean, if the work is here, then it would  
13 be -- seems like it would be better and say let's look  
14 and see if we can add to what's already been done rather  
15 than find...

16 DR. JOHNSON: At this point I think what we  
17 need to do -- I kind of basically for my own personal  
18 beliefs think that if we would have had all the  
19 information it would have been more meaningful. I will  
20 make whatever recommendation the subcommittee feels  
21 appropriate regardless of what, you know, the intent may  
22 have been on anybody's part previous. I don't like  
23 thinking that we all sat through several different  
24 meetings and you know if there's a draft that's going to  
25 be done by July 7 is what we're doing really having any

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1 input. And that I think -- and we'll stop the  
2 discussion at this point and I think that's the  
3 frustration everybody sitting here has. And if it's to  
4 review policy, then give us documents that need to be  
5 reviewed because it's hard to believe that anything we  
6 do can be incorporated in a document that's going out  
7 that quickly. That's the way I feel and you know that's  
8 Alice Johnson, National Turkey Federation, and not the  
9 voice of the subcommittee. Why don't we go ahead and  
10 try to move through the criteria just so we can have  
11 some sort of, you know -- if we can still be on record  
12 as having some input?

13 DR. JAN: Well, inspection then -- are we  
14 on inspection?

15 DR. JOHNSON: We're on inspection?

16 DR. JAN: Then I would say the criteria  
17 needs to be somehow worded that the inspection results  
18 and identifying non-compliance of regulations and  
19 documented them. I mean that's what we expect from our  
20 inspectors, to identify non-compliances and document the  
21 non-compliance. And then with the documentation, expect  
22 that the staff can respond.

23 DR. JOHNSON: Okay. And when we talk about  
24 non-compliance or deviation from a regulation, you know,  
25 I don't know that -- do we want to use the term

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1 regulation again because is that getting too much into  
2 the state's business or do we want to go back to Irene's  
3 outcome based. Deviation from...

4 DR. LEECH: Well, and you know...

5 DR. JAN: I think we need to stay with the  
6 regulations.

7 DR. LEECH: Well, looking at the document  
8 that we did use last time that we've agreed a minute ago  
9 -- makes a lot of sense to me. There's an inspection  
10 system that ensures production only of safe, wholesome  
11 and properly marked and labeled meat and poultry  
12 products.

13 DR. JOHNSON: Yeah. See. I think that's...

14 DR. LEECH: That's the kind of statement  
15 that makes sense to me.

16 DR. JOHNSON: And you don't deal with non-  
17 compliance from an individual regulation. You deal with  
18 the outcome of what's coming out of the plant. And that  
19 may be exactly what...

20 MS. ROTH: Right.

21 DR. JOHNSON: But I think that we need to  
22 reword that into there. All right.

23 DR. LEECH: So there's -- an inspection  
24 system that ensures production and this is only of safe,  
25 wholesome, and properly marked and labeled meat and

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1 poultry products.

2 DR. JOHNSON: Kevin? Mark?

3 DR. ELFERING: I agree.

4 DR. JOHNSON: Okay. Product sampling  
5 requirements.

6 DR. LEESE: We're going to go with that,  
7 an inspection system that ensures -- above that  
8 statement -- do you want me to write it up here?

9 DR. ELFERING: I don't think you necessarily  
10 need to write it up.

11 DR. LEESE: Okay.

12 DR. JOHNSON: Well, we -- somebody will --  
13 eventually somebody will have to write it somewhere.  
14 Yolanda, you got it? She's good. She's got it under  
15 control. All right. Product sampling requirements. I  
16 don't think we want to talk frequency. We again want to  
17 talk -- the outcome, as we know, we've got a safe  
18 product. Right?

19 DR. ELFERING: Yes.

20 DR. JOHNSON: Because we -- I don't think  
21 that either...

22 DR. ELFERING: My own -- and I even say  
23 frequency, but product is sampled at a frequency to  
24 ensure. Probably the same thing.

25 DR. LEECH: Do you want to use -- using the

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1 scientific language, do you want to use a statistically  
2 -- and then throw in something like scientifically?

3 DR. LEESE: I would agree with that.

4 MR. KENT: You got to be careful that we go  
5 into an area that you can't really handle.

6 DR. LEESE: Yeah. Statistical...

7 MR. KENT: It's pretty tough to make a  
8 statistical...

9 DR. ELFERING: See. We recommended if you  
10 want to start the sampling -- if you want to look at  
11 doing like a 95 percent confidence...

12 DR. JOHNSON: Nobody's got the money to do  
13 it.

14 DR. ELFERING: ...you're going to get into --  
15 no way. You start producing 300 pounds of product and  
16 sampling 290 of it.

17 DR. JOHNSON: Yeah. There's just not the  
18 money to really be doing that.

19 MR. KENT: A lot of sampling would be  
20 clarification really, verifying that whatever you're  
21 doing is necessary.

22 DR. JOHNSON: Sampling at a frequency? Who  
23 read that?

24 DR. ELFERING: I said it but I don't remember  
25 what I said. Well, sampling at a frequency that ensures

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1 product safety.

2 DR. JOHNSON: Okay. Now, Irene, okay, that's  
3 kind of the skeleton. Now, what do we need to do?  
4 Because product sampling may also include economic  
5 sampling as well for fat content, right? State programs  
6 do that?

7 DR. LEE: Fat and water.

8 DR. LEESE: Is it ensuring or is it  
9 verifying?

10 DR. LEECH: That's a good point. It's  
11 verifying that what's there is -- that's how you...

12 DR. LEESE: Because you really can't test  
13 enough to...

14 DR. LEECH: No.

15 UNKNOWN: I think the amount of testing that  
16 the agency does, whether it's the state or the federal,  
17 is really verification.

18 DR. JOHNSON: Okay. So we're saying product  
19 is sampled -- do we want to say -- do we need to put the  
20 sampling...

21 DR. LEECH: Do you want to say sampling is  
22 adequate to verify that the products are safe,  
23 wholesome, properly marked and labeled?

24 DR. JOHNSON: That's a good point, because  
25 we're all thinking micro sampling or analytical

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1 sampling, but -- and technically inspection is sampling.  
2 Right?

3 DR. JAN: But if you're talking about  
4 laboratory sampling and I think the...

5 DR. LEECH: Well, but even not laboratory.  
6 I mean if you sample to look at what...

7 DR. JOHNSON: If you do a net weight sample,  
8 if you do a -- I guess we don't do those any more. That  
9 was back in the old days.

10 DR. LEESE: Really a sample doesn't do  
11 anything onto itself. This is the first step in the  
12 process.

13 DR. LEECH: It's adequate to verify.  
14 That's what I was going -- sampling the frequency -- the  
15 verify that the product is safe...

16 DR. JAN: This is called product-sampling  
17 requirements. Yeah. So...

18 DR. JOHNSON: When the product sampling is  
19 adequate -- I'm just writing this down. It may not  
20 work, but I have to see it.

21 DR. LEECH: The product is safe, wholesome,  
22 properly marked and labeled.

23 DR. JOHNSON: How about if we just say  
24 outcome instead of repeating that because isn't that  
25 what we considered our outcome. Product sampling is

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1       adequate to verify...

2               DR. LEECH:        To verify the outcome...

3               DR. JOHNSON:     Product outcome is...

4               DR. LEECH:        To verify...

5               DR. JOHNSON:     ...appropriate or something --  
6       product outcome.

7               DR. LEECH:        I'm a little hesitant about --  
8       because of the way we use outcome in other ways whether  
9       somebody -- I'm getting into legalistic here -- whether  
10       that's a safe thing to do. Now, I agree with you that  
11       listing it every time is a problem too, but...

12              DR. JOHNSON:     Yeah. Since we've kind of  
13       defined -- above stated outcome. Is that okay? All  
14       right. Product sampling is adequate to verify above  
15       stated outcome is achieved.

16              DR. JAN:        Well, let's cut and paste. Why  
17       don't we just put in to repeat...

18              DR. JOHNSON:     Repeat. Okay.

19              DR. JAN:        ...to repeat that?

20              DR. JOHNSON:     I feel like we're on -- what is  
21       it where they go, go to the next one, go to the next  
22       one.

23              DR. LEECH:        Well, we kind of are, but we  
24       want measurable -- I mean if you think about what we're  
25       doing, if it's not measurable it doesn't do anybody any

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1 good.

2 DR. JOHNSON: And do we want to put, as a  
3 footnote, product sampling to include microbiological,  
4 analytical, because the first thing I think is micro...

5 DR. JAN: But the way she's defining it  
6 covered -- if you say safe, wholesome, properly marked  
7 or properly labeled, that would include micro and it  
8 would include economic because economic relates to  
9 property label. I mean...

10 DR. JOHNSON: Okay. So let's put it so that  
11 everybody just doesn't focus on the micro part. So have  
12 the product sampling requirement includes food safety  
13 and economic or food safety and other consumer  
14 protection.

15 DR. JAN: You could do that or -- I still like  
16 the...

17 DR. LEECH: As long as everybody  
18 understands what those are. I mean I don't do this  
19 every day and the words safe, wholesome, properly marked  
20 and labeled makes sense to me...

21 DR. JAN: I think that's -- I like that too.

22 DR. LEECH: ...consumer protection, I can  
23 put all kinds of goodies under that and, you know...

24 DR. JOHNSON: Well, we're getting ready to  
25 down here on six.

1 DR. LEECH: I didn't say you wanted me to.

2 DR. ELFERING: You're absolutely right.

3 DR. JOHNSON: We're getting ready to.

4 DR. ELFERING: If, you know, labels it  
5 properly, it encompasses all the economic issues.

6 DR. JOHNSON: Okay.

7 DR. LEECH: And I think that  
8 communicates...

9 DR. JAN: I think that's the way to go.

10 DR. ELFERING: It's not going to do anything  
11 with safety but that's...

12 DR. LEECH: Well...

13 DR. JAN: The safe code...

14 DR. LEECH: ...the safe, wholesome...

15 DR. JAN: So you're covering micro and...

16 DR. LEECH: ...properly marked and labeled.  
17 I mean that covers them all.

18 DR. JAN: Yeah.

19 DR. LEECH: That's our thing to put in and  
20 I guess we'll cut and paste.

21 DR. JOHNSON: We'll need to work on that a  
22 little bit because I think you may want to just cut and  
23 paste. All right. Let's real quick -- the first seven  
24 of these have to be at least equal to. So it would be  
25 nice to get through at least the first seven. Staffing

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1 requirements.

2 DR. LEECH: It's staffing that's sufficient  
3 to meet the income, you know. It's another staff to do  
4 what you got to do.

5 DR. JOHNSON: And it's not necessarily you  
6 have to walk and...

7 DR. LEECH: You have to have one of these,  
8 one of these and one of those.

9 DR. JOHNSON: ...to address every one...

10 DR. LEECH: Right.

11 DR. JOHNSON: It's to be comfortable with the  
12 outcome.

13 DR. ELFERING: But we don't want to be held to  
14 the same numbers of staffing that other agencies -- and  
15 let's not even -- let's not just say FSIS. Our state  
16 health department has a number of people that work in a  
17 particular program that we don't have adequate funding  
18 for but we're certainly accomplishing, I think...

19 DR. JOHNSON: The outcome.

20 DR. ELFERING: Yes. Right. So I mean it's --  
21 FSIS has a lot of people.

22 DR. JOHNSON: Okay. So is everybody  
23 comfortable with staffing to meet the outcome?

24 DR. LEECH: That's real short wording.

25 DR. ELFERING: That's right.

1 DR. JOHNSON: All right. Humane handling  
2 laws and regulations for...

3 DR. ELFERING: Well -- and there's no argument  
4 at all. As a matter of a fact, I think that whatever  
5 will be in the federal act I think would be exactly what  
6 we would want it to be.

7 DR. JOHNSON: Okay. So enforcement -- as far  
8 as handling humane handling laws and regulations we want  
9 to put the criteria. I'm trying to read the question so  
10 that...

11 DR. LEECH: What do you want?

12 DR. JOHNSON: You took my question.

13 DR. LEECH: You wanted the original  
14 question?

15 DR. JOHNSON: No. I got it here. Sorry.  
16 Yeah. "What are the criteria FSIS used for evaluating  
17 humane handling laws and regulations?" How would we  
18 word it?

19 DR. ELFERING: What is the question again?

20 DR. JOHNSON: The question is "what are the  
21 criteria FSIS should use for evaluating humane handling  
22 laws and regulations?"

23 DR. JAN: That state laws and regulations are  
24 equal to -- federal laws and regulations referring to  
25 humane handling are adopted or...



1 MR. SCHAD: This is a similar question to  
2 number one. It's just a different...

3 DR. JAN: Yeah.

4 DR. JOHNSON: Different twist. Yeah.

5 DR. JAN: Yeah.

6 DR. ELFERING: I think one thing with the  
7 animal humane practices, you're not going to get any  
8 argument from the states that they should not be in the  
9 same as USDA's, FSIS in that regard. I think nationally  
10 we should have a uniform standard. So...

11 DR. JOHNSON: So should we use the word  
12 uniform to say...

13 UNKNOWN: Put uniforms on.

14 DR. JOHNSON: Consistent. Is that a good  
15 word?

16 DR. LEESE: We don't want to be limited to  
17 the national.

18 DR. ELFERING: No. No. Again, I...

19 DR. JOHNSON: To be consistent with those  
20 found in the Act.

21 DR. ELFERING: Yeah. Consistent with the  
22 Humane Slaughter Act.

23 DR. JAN: Consistent with the Humane Slaughter  
24 Act.

25 DR. ELFERING: We had a discussion whether or  
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1 not poultry would be able to get a transmissible  
2 spongiform encephalopathy because number one, you'd have  
3 to have a brain.

4 DR. JOHNSON: What does that mean?

5 DR. ELFERING: Turkeys are the exception.

6 DR. JOHNSON: Is that like a turkey reference  
7 or what?

8 DR. ELFERING: It was a chicken reference.

9 DR. JAN: The difference between a chicken and  
10 a turkey, the turkey has half the brain of the chicken.

11 DR. JOHNSON: Turkeys a little bigger than  
12 chicken. Okay. Man, we're cruising down. Other  
13 consumer protection regulations and so the question  
14 would read, "What are the criteria FSIS should use for  
15 evaluating other consumer protection regulations?" We  
16 could about put our outcomes again that wholesome,  
17 unadulterated, properly labeled."

18 DR. ELFERING: Again, I don't think we want to  
19 be held in any similar frequency because our resources  
20 that we're going to have, we're going to focus more on  
21 food safety issues. And we're probably only going to be  
22 looking at economic issues when we see that there is  
23 potential concern, not routinely -- as much as we can  
24 routinely sample for food safety.

25 DR. JOHNSON: Okay. So give me a statement.

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1 DR. LEECH: But see. To me if you put  
2 frequency and it's not an outcome...

3 DR. ELFERING: No.

4 DR. LEECH: ...it's perceived to be.

5 DR. ELFERING: We don't want a frequency.

6 DR. LEECH: That's why -- yeah.

7 DR. JOHNSON: So can you...

8 DR. LEECH: You don't want to do that.

9 DR. JOHNSON: Can you repeat what he just  
10 said so we can write it down?

11 DR. LEECH: The outcome of any consumer --  
12 not any -- the outcome of consumer protection  
13 regulations provides for safe, wholesome -- maybe  
14 reference that statement that we've been using over and  
15 over -- safe, wholesome and properly...

16 DR. JAN: Consider other consumer that  
17 wouldn't necessarily be safe and wholesome. It would be  
18 talking about actually meeting the product standards.

19 DR. ELFERING: Yeah. There you go, Lee.  
20 Meeting the product...

21 DR. JOHNSON: Yeah. But who...

22 DR. LEESE: Well, wholesome, that's the  
23 word you used...

24 DR. JOHNSON: But who defines...

25 DR. JAN: The regulations...

1 DR. LEECH: That's why I kept using those  
2 same words instead of introducing...

3 DR. JAN: ...and there's, of course, the  
4 standards...

5 DR. JOHNSON: Yeah. But is that...

6 DR. JAN: Product standards are defined in the  
7 regulations and then there's also -- I don't know if --  
8 it's another document. I understand it comes from the  
9 regulations.

10 DR. JOHNSON: So we're actually referencing  
11 the USDA regulation on product standard.

12 DR. JAN: Yeah.

13 DR. JOHNSON: And you guys are comfortable  
14 with that.

15 DR. JAN: Sure.

16 DR. JOHNSON: I guess there's one way you  
17 could...

18 DR. LEECH: But there's more than one  
19 standard. Isn't that more than product standards? Is  
20 product standards where we worry about whether it's  
21 labeled properly?

22 DR. JAN: Right.

23 DR. JOHNSON: Yeah.

24 DR. JAN: Well, I mean, you worry -- if  
25 it's hamburger it cannot have more than 30 percent fat.

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1 DR. LEECH: Right.

2 DR. JAN: So that's consumer protection.  
3 So if you put 40 percent fat, you can't call it  
4 hamburger.

5 DR. LEECH: Right.

6 DR. JAN: And that's the product  
7 standards and that's under consumer protection. So then  
8 that would relate to labeling.

9 DR. LEECH: Okay. But -- so do we want to  
10 say that it meets standards -- definition -- it meets  
11 the standards and then add the part about the labeling  
12 and so forth. Is it separate?

13 DR. JAN: Well, we could -- you know, we  
14 could say that. Well, let's see. Number two, where did  
15 she write it?

16 DR. JOHNSON: She's writing up there.

17 DR. JAN: Oh, right here. The outcome of  
18 consumer protection provide for safe -- well, that would  
19 take safe and wholesome. I would say provide for...

20 DR. JOHNSON: Wholesome because wholesome  
21 would include spoilage and things like that that would  
22 be a food safety.

23 DR. JAN: All right. Yeah. We could do  
24 that.

25 DR. JOHNSON: And we'll get into that word

1 that's never really been defined.

2 DR. JAN: For consumer protection would  
3 be for...

4 DR. LEECH: Well, provide that they meet  
5 the product -- that they meet the...

6 DR. JAN: Yeah. I would say...

7 MR. SCHAD: Well, if we're talking about  
8 product standards, don't we want them to be the same as  
9 the federal?

10 DR. JAN: Yeah. We do. And I would just  
11 -- I mean that's what I say, 319 we adopt or that they  
12 meet the federal standards. I don't know how else you  
13 could -- I mean what else? I feel the consumer  
14 protection provides for...

15 DR. JOHNSON: If you guys are comfortable  
16 with that -- I can't imagine why we wouldn't from  
17 looking at it from a federal standpoint be a nightmare  
18 to try to ship stuff if we didn't have uniform  
19 standards. But at the same time, maybe I'm just  
20 thinking inside the box.

21 MR. SCHAD: I just want to ask a question.  
22 Is there anything else other than product standards that  
23 would put them under consumer protection regulations?

24 DR. LEECH: That's why I was saying that  
25 the labeling and so forth would be a part of it. That's

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1 not a product standard.

2 DR. JOHNSON: Yeah.

3 MR. SCHAD: I think it is.

4 DR. LEECH: You think it is?

5 DR. JOHNSON: Yeah. By definition...

6 DR. LEECH: Oh, okay.

7 DR. JOHNSON: ...you can only label it...

8 DR. LEECH: Okay.

9 DR. JOHNSON: ...if it meets a...

10 MR. SCHAD: Yeah. But it keeps on -- it  
11 has a certain standard.

12 DR. LEECH: Well, I agree. But I also  
13 think the part about, you know, that it weighs what you  
14 say it does and...

15 DR. JOHNSON: Yeah.

16 DR. LEECH: ...all that to be a part of a  
17 label.

18 DR. JOHNSON: Well, that would be -- the  
19 Agency, when they say unadulterated, they -- we could  
20 use -- because unadulterated includes economic  
21 adulteration, which would be what you're talking about.

22 MR. SCHAD: Is it or is it misbranded?

23 DR. JOHNSON: It's the economic adulteration  
24 is not a term that considers your views and...

25 MR. SCHAD: And I don't know. I'm thinking

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1 of the FDA Act more where they define more misbranded as  
2 opposed to the other Agency.

3 DR. JAN: The outcome of consumer  
4 protection provides for properly labeled, wholesome  
5 products that meet the federal product standards...

6 UNKNOWN: That's it.

7 DR. JAN: ...or something like that. But  
8 I think properly labeled would cover -- would be good to  
9 slip that in.

10 DR. LEESE: But I think the standardization  
11 would be the cork work, too.

12 DR. LEECH: I would agree.

13 DR. JAN: So we got the outcome of  
14 consumer protection provides for properly labeled,  
15 wholesome meet -- or products that meet federal product  
16 standards.

17 DR. LEECH: Yeah.

18 DR. JAN: And that way it brings in 319  
19 and it brings in labeling, which is 317 or something.

20 DR. LEECH: Right.

21 DR. JAN: And that goes to net weight and  
22 all that kind of stuff.

23 DR. JOHNSON: All right. Let's move on to  
24 enforcement of regulation. And I think you've already  
25 defined it. Enforcement is appropriate to meet the

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1 outcome. Your wording when you first started talking  
2 was really good about we'll do things differently in  
3 order to get an establishment to understand what needs  
4 to happen.

5 DR. LEECH: What we're really saying there  
6 that the state ought to have the authority to require  
7 that it meet the standard of outcome. Is that what  
8 we're saying that they have to be...

9 DR. ELFERING: Well, I think there's a couple  
10 of things to consider, what really, truly is  
11 enforcement.

12 DR. JOHNSON: Right.

13 DR. ELFERING: If it's daily enforcement where  
14 you're enforcing the regulations and making sure that  
15 product is being produced under sanitary conditions and  
16 then is wholesome is one thing. And then you get into a  
17 step of enforcement where you have criminal penalties or  
18 civil penalties. And I think that's one of the things  
19 that we've looked at is -- maybe I'll give you an  
20 example is in some cases the federal requirements are  
21 going to have more severe penalties than what some state  
22 programs have. But let's look at reality. Are you  
23 getting a U.S. attorney to charge some of these things  
24 -- some of these penalties? I would say this that there  
25 are more federal violations that are prosecuted in state

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1 courts because the federal government has turned them  
2 over to the state agency to prosecute them than what the  
3 federal government prosecutes. And in those cases,  
4 there perfectly happy to get a misdemeanor charge rather  
5 than a felony charge because it still becomes a  
6 deterrent to the industry and...

7 DR. JOHNSON: It would change the outcome.

8 DR. LEECH: That's why I was trying to use  
9 the words that they've got the tools they need to assure  
10 that the outcome is met.

11 DR. JOHNSON: Yeah.

12 DR. LEECH: And whatever those tools are...

13 DR. JOHNSON: That's -- yeah. That's good.  
14 Appropriate enforcement tools...

15 DR. LEECH: To assure that...

16 DR. JOHNSON: Assure...

17 DR. LEECH: ...assure the outcome.

18 DR. ELFERING: Yeah.

19 DR. LEECH: I know we're using the same  
20 words over and over and over.

21 DR. JOHNSON: Well, but I don't know how else  
22 we would do it because it's -- you've gotten those --  
23 our little buzz words same as we are...

24 DR. ELFERING: But we don't want unsafe  
25 product in the commerce. That's...

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1 DR. LEECH: Right. But that's the outcome.  
2 That's why we're not saying that every time.

3 DR. LEESE: No state can come close to  
4 matching one on one...

5 DR. LEECH: And we don't need that. But we  
6 need...

7 DR. LEESE: And so we want to make sure  
8 that there's not the slightest implication, unless you  
9 want that.

10 DR. LEECH: No. I don't think so.

11 DR. JOHNSON: Okay. I would like to -- we're  
12 at the end of the seven that -- shoot what did I do with  
13 the glasses?

14 DR. LEECH: I think we need to get -- well,  
15 maybe we can go fairly fast on the others. The training  
16 requirements seems logical to me for outcome is that,  
17 you know, the training results -- staff that have the  
18 knowledge, you know -- it's a performance type of thing.  
19 And I think they've been talking about it all along and  
20 so it's just a matter simply of now, you know, doing the  
21 testing and the evaluation to show that the training  
22 does what it's supposed to. The training results and  
23 workers and procedures that produce the outcome.

24 DR. ELFERING: The one thing I'm going to add  
25 to that a little bit -- and let's go back a little bit

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1 in that I think that FSIS has some responsibility in all  
2 of this too. And the reason is we have not afforded the  
3 same training opportunities that have been afforded to  
4 FSIS employees. So I think this becomes a two-way  
5 street.

6 DR. JOHNSON: Well, now, is that -- would  
7 that be something that we should talk about under --  
8 because it's the -- is that the funding that we need to  
9 talk about, funding and financial accountability or is  
10 that...

11 DR. ELFERING: There was no issue with funding  
12 in these recent issues. When FSIS trained their  
13 consumer safety officers, the states said we want to be  
14 able to send people to the same CSO training as that  
15 you're providing your consumer safety officers. And we  
16 were given a flat-out no. That's one I think that we  
17 need to change is if we're going to be equal to or let's  
18 say that as equal partners, then we have to be able to  
19 have the same training opportunities as those that are  
20 provided to FSIS employees so that we can adequately  
21 train our staff to meet that criteria.

22 DR. JAN: I think that's a good point.  
23 Either by participating in the FSIS training or  
24 obtaining the materials and do our training with a  
25 certified trainer or train the trainer.

1 DR. ELFERING: And Dr. Leese has been trained  
2 -- I think he even volunteered to do train the trainer  
3 for us. And I don't even think that flew.

4 DR. LEESE: Well, you're still going to --  
5 we're having train the trainer.

6 DR. ELFERING: No. We are.

7 DR. LEESE: Yes.

8 DR. ELFERING: Yes.

9 DR. JOHNSON: Okay. Here's what I've got.  
10 The first part, the inspection staff should be  
11 knowledgeable to make determination as to if the outcome  
12 is achieved, they should understand the authority to  
13 enforce the state requirements for the outcome. New  
14 statements to be emphasized, states should be allowed  
15 slots in FSIS should be -- I'm saying allowed slots in  
16 FSIS training program but that's maybe not a good word  
17 -- should be allowed slots in FSIS training program,  
18 should be provided training materials, the same  
19 materials as FSIS inspectors in order to train their  
20 folks. Now, help me reword it.

21 DR. LEECH: The outcome way of saying that  
22 is not that they should be given but it seems that they  
23 use them. Do you know what I'm saying?

24 DR. JAN: Can't use them if they're not given  
25 though.

1 DR. JOHNSON: Well, that's why I was trying  
2 to...

3 DR. LEECH: I realize that.

4 DR. JAN: I was trying to make the...

5 DR. LEECH: But we're evaluating state  
6 programs.

7 DR. JAN: But if you say to use them and we  
8 don't have opportunity to use them, when they send  
9 them...

10 MR. SCHAD: How about access to them?

11 DR. JAN: Yeah. We didn't have access.

12 DR. ELFERING: And I think the thing is that,  
13 again, to mainly preserve some of our autonomy is we may  
14 -- if we're having consumer safety officer training...

15 DR. JOHNSON: We must.

16 DR. ELFERING: ...and if we see this  
17 particular violation of a plant, we may choose a  
18 different enforcement action than issuing a 30-day  
19 letter for example.

20 DR. LEECH: And I guess part of what I'm  
21 really getting at was wondering whether the thing that  
22 I'm having access to the training levels...

23 DR. JOHNSON: Well, we can make it a...

24 DR. JOHNSON: ...outcomes.

25 DR. JOHNSON: Maybe we can make it -- we can

1 make it kind of a side note, because I think the outcome  
2 is that the inspector is knowledgeable in what is the  
3 appropriate outcome and that they understand they're in  
4 authority. And then we can say, you know, in order  
5 to...

6 DR. JAN: The states can meet that.

7 DR. JOHNSON: ...in order for states to meet  
8 that they must have access to FSIS training. I'd like  
9 to say not only -- to your point, you want them to  
10 really be -- you're not going to focus on the FSIS  
11 enforcement training so much as the science-based  
12 portion...

13 DR. ELFERING: Correct.

14 DR. JOHNSON: ...and to understand the  
15 regulation.

16 DR. ELFERING: Um-hum.

17 DR. JOHNSON: Okay. All right. We'll play  
18 with that a little bit. Okay.

19 DR. JOHNSON: And perhaps even in some  
20 regards there are training programs that we can develop  
21 that we feel are more appropriate for our particular  
22 programs.

23 DR. LEECH: So no matter how you do the  
24 training; it's simply the outcome of the training.  
25 There are tests and evaluations that prove that those

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1 who participated in, you know -- that the staff has the  
2 knowledge and skills to do the job. That's what you're  
3 saying.

4 DR. JOHNSON: Knowledge, skills and ability,  
5 do you want me to use that little best word.

6 DR. JAN: That's it exactly.

7 DR. JOHNSON: I think I remember that from my  
8 FSIS days. Okay. All right. We'll play with that and  
9 let everybody look at it in a little bit and see what  
10 you think because I think we've got it. Civil rights  
11 requirements.

12 DR. LEECH: There you got to meet federal  
13 law and no use fiddling around with anything else. I  
14 mean it's foolish to do anything else in my book unless  
15 you'd like to come to Virginia where we're never wrong.

16 DR. ELFERING: No. You're right. Again, you  
17 know, it's the same. We have to meet the federal  
18 standards.

19 DR. JOHNSON: Federal standards.

20 DR. LEECH: Meet the federal standards.

21 DR. JAN: That way you could do it through  
22 state...

23 DR. LEECH: How you do it doesn't matter.  
24 It's that you meet federal -- you meet the legal  
25 standards.



1 DR. ELFERING: Let's go back a little bit...

2 DR. JOHNSON: Okay.

3 DR. ELFERING: ...in saying we had a  
4 presentation at our state directors' meeting in  
5 St. Louis. And people were giving presentations on  
6 civil rights where actually wanted to hold the states to  
7 a higher degree than they were holding themselves. And  
8 those are the things that become unpalatable to state  
9 programs in states, you're going to do this. Is the  
10 federal government doing it? No, we're not, but you're  
11 going to. And there again, I think we need to be...

12 DR. JOHNSON: We'll put a little -- we'll  
13 talk about federal standards but to be sure the federal  
14 and state agencies are consistent with their -- with  
15 standards.

16 DR. LEECH: Are treated the same.

17 DR. JOHNSON: In states.

18 DR. LEECH: States are not required to  
19 do...

20 DR. JOHNSON: Federal and states have  
21 standards applied consistently or something like that  
22 because it's the application that you're worried about.  
23 Right?

24 DR. ELFERING: Um-hum.

25 DR. JOHNSON: Mark, you're okay with that?

1                   MR. SCHAD:       Yes.

2                   DR. JOHNSON:     Consistently applied.   Somebody  
3 help me with my English.

4                                   \*\*\*

5                   [Tape 2.]

6                                   \*\*\*

7                   DR. ELFERING:   One of the things in our last  
8 renewal our handicapped spaces were not wide enough to  
9 accommodate a van.   Well, we don't have any vans that  
10 come in there, not that we shouldn't have adequate  
11 spaces.   But I would love to see the spaces in the south  
12 building, the basement, to see what is available.

13                  DR. JAN:            Yeah.   In our last review they  
14 said that we needed to provide bilingual translation of  
15 the regulations.   And I said, well, I tried to get that  
16 in the fed's public print shop.   And they said they  
17 don't have any other language except English.   And she  
18 said, well, it doesn't matter what the federal is.   You  
19 have to do it.

20                  DR. LEESE:         Did they use the word should?

21                  DR. JAN:            No.   They said I have to.

22                  DR. LEESE:         Have to.

23                  MS. ROTH:         And we're required to, if I'm  
24 not mistaken.

25                  DR. JAN:            Well, I think...

1 MS. ROTH: The current manual...

2 DR. JAN: No. Well, this is how our  
3 discussion -- I think she backed off on it when we had  
4 our outreach, but I never saw a final report because I  
5 think the review was halted and stopped.

6 DR. JOHNSON: Let's...

7 DR. ELFERING: We had to write it.

8 UNKNOWN: I think that's aware of what you're  
9 talking about exist, so maybe that would help.

10 DR. JOHNSON: Let's -- you would have to  
11 write it different. Wouldn't you?

12 DR. LEECH: I think what you're really  
13 going to say here -- I don't know. I know that you said  
14 consistently. I wonder whether somebody who wasn't in  
15 this discussion is going to...

16 DR. JOHNSON: Well, yeah. Federal and state  
17 standards...

18 DR. LEECH: But I'm not sure what I said.

19 DR. JAN: How about just -- yeah.

20 DR. JOHNSON: Federal and state standards  
21 must be met. These standards are consistently applied.

22 DR. JAN: I don't know how you put these  
23 in there. It would be nice to be able to say that it  
24 doesn't have to utilize the federal system and ask what  
25 they want us to do at least to try and...

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1 DR. ELFERING: Yeah. I would say by meeting  
2 the standards...

3 DR. JAN: But we have a state civil  
4 rights, equal opportunity -- well, the office of AMBA  
5 [ph], which does all that stuff...

6 DR. JOHNSON: Maybe we say meet the state --  
7 meet -- because this is something that's independent of  
8 the meat and poultry. You have state regulations so --  
9 and the state regulations probably are equivalent to the  
10 federal. So what if we just say, meet requirements  
11 outlined in state...

12 DR. JAN: That meet Title 6 or whatever  
13 it is -- Title -- is it 6?

14 MS. ROTH: Title 6.

15 DR. JAN: Because right now they're  
16 telling us if a plant make a complaint we can't handle  
17 it. We have to turn it over to FSIS. It doesn't make  
18 sense.

19 DR. LEESE: Well, that's the Law though.  
20 Whether it makes sense or not doesn't matter. That's  
21 the way the Law is written.

22 DR. JAN: This says it has to be...

23 DR. LEESE: That's right.

24 DR. JAN: In a state plant...

25 DR. LEESE: That's right.

1 DR. JAN: ...the complaint has to be  
2 turned over to the feds to use the...

3 DR. LEESE: In the right -- yeah. If we  
4 have everything in context correctly that's absolutely  
5 true. In fact, even at FSIS -- a complaint to FSIS  
6 cannot be address by FSIS. It has to go to that higher  
7 authority and the USDA just as a state complaint has to  
8 go to USDA. So we can't handle ourselves either. So  
9 that's the Law. I mean but in that case you have to be  
10 held to it.

11 DR. JAN: Well, we have a higher -- I  
12 mean we don't have it ourselves, our program. We have a  
13 -- the department has a...

14 DR. LEESE: Now, the state has the option  
15 to tell the person if they wish you can work with them  
16 on it, but they have to understand that they -- as an  
17 alternative to this voluntary interaction, they can go  
18 through the USDA.

19 DR. JOHNSON: Okay. Let's try to hit 10  
20 since we're so close because I think we pretty much --  
21 what we're going to say is...

22 DR. JAN: That was 10.

23 DR. ELFERING: That was 10.

24 DR. JOHNSON: No. We've got...

25 DR. LEECH: No. We got funding and

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1 financial help.

2 DR. JOHNSON: ...funding and financial. And  
3 I figured you guys would really want to...

4 DR. ELFERING: Just fund us 100 percent and  
5 we'll do what it takes.

6 DR. JOHNSON: That's what I figured you'd  
7 want. Funding equal to. Okay. Okay. What's the  
8 issue?

9 DR. LEECH: Isn't it a matter of saying  
10 there's funding sufficient to meet the outcomes and that  
11 the funds are managed.

12 DR. JAN: Funding -- yeah. Funding to meet 50  
13 percent of the cost of state inspection...

14 DR. ELFERING: At least.

15 DR. JOHNSON: All right. Now, wait a minute.  
16 Hold it. Let's be sure we're reading the question  
17 right. What are the criteria FSIS should use for  
18 evaluating that state funding and financial  
19 accountability are at least equal to that of the  
20 federal?

21 DR. LEECH: Right.

22 DR. JOHNSON: That's a little bit different  
23 than trying to get them to fund you 100 percent. We're  
24 already in trouble for the 22 recommendations.

25 DR. ELFERING: And I don't know. I can only

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1 -- again, I can only look at our program. They pretty  
2 much already set the guidelines of how our funding can  
3 be spent and I think those are the things that are  
4 already established.

5 DR. JOHNSON: Who did that though?

6 DR. ELFERING: FSIS.

7 DR. JAN: Yeah. Basically the funding --  
8 just that the funds are expended for -- according to the  
9 cooperative agreement. In other words, you know, I can  
10 spend federal funds on doing restaurant inspections.

11 DR. JOHNSON: All right.

12 DR. JAN: So...

13 DR. JOHNSON: Funding and financial  
14 accountability state...

15 DR. ELFERING: Well, isn't there even like a  
16 -- there's a directive right now.

17 DR. JAN: Yeah. Directive 330...

18 DR. JOHNSON: Yeah. But how do they know  
19 that you're -- what's the criteria they use to know that  
20 you're meeting that directive? You provide  
21 documentation to show state allocation of money is...

22 UNKNOWN: Allocation is a good word.

23 DR. JOHNSON: ...allocation of funds that  
24 complies with -- or complies with -- I like the  
25 cooperative agreement.

1 DR. ELFERING: Cooperative agreement. Yeah.

2 DR. JOHNSON: Who knows? Years from now  
3 maybe we won't have directives. We'll just agree to  
4 everything.

5 DR. JAN: It should also state in there  
6 that federal funding of inspection and federal plants on  
7 the TA agreement should be 100 percent federally funded.  
8 Throw it in there.

9 DR. JOHNSON: All right. Well, would we want  
10 to say committee recommends...

11 DR. JAN: Yeah

12 DR. JOHNSON: ...reevaluation of funds?

13 DR. JAN: Funding for...

14 DR. LEECH: But by an outcome.

15 DR. JOHNSON: Dr. Lee C. Jan. Okay. I'll --  
16 okay. Let me work with Doug a little bit. Does  
17 everybody want to take a break and come back in here in  
18 like five minutes and we'll see if we've got everything  
19 captured.

20 DR. ELFERING: You want us out of here. Don't  
21 you?

22 DR. JOHNSON: So we can get some work done.  
23 Yeah. All right. Now, we're going to do what we need  
24 to...

25

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4 IN RE: NATIONAL ADVISORY COMMITTEE ON MEAT AND  
5 POULTRY INSPECTION MEETING

6

7 HELD AT: ALEXANDRIA, VIRGINIA

8

9 DATE: JUNE 23, 2003

10

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