

TRANSCRIPT OF PROCEEDINGS

NATIONAL ADVISORY COMMITTEE ON
MEAT AND POULTRY INSPECTION MEETING
STANDING SUBCOMMITTEE NO. 2

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THE U.S. DEPARTMENT OF AGRICULTURE

NATIONAL ADVISORY COMMITTEE ON
MEAT AND POULTRY INSPECTION MEETING
STANDING SUBCOMMITTEE NO. 2

Marquette Room, First Floor
Loews L'Enfant Plaza Hotel
480 L'Enfant Plaza
Washington, D.C.

Tuesday,
October 31, 2000

The meeting was convened at 7:04 p.m.

PARTICIPANTS:

MICHAEL MAMMINGA, Chairman
NANCY DONLEY
COLLETTE SCHULTZ KASTER
DANIEL LaFONTAINE
GARY WEBER
ELAINE DODGE
MARSHALL DREYFUSS

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P R O C E E D I N G S

(7:04 p.m.)

1
2
3 MR. MAMMINGA: And it would seem to me that the
4 things -- again, I'm just throwing some ideas out here, and
5 then we'll get down to these questions -- but a customer
6 list and consignees that have to do with the specific
7 locations where affected products go is the major issue
8 here. The quantity probably is useful in that if there is a
9 great big file on it somewhere, obviously we might want to
10 go look there if we are going to help out.

11 The little caveat that pricing might be a part of
12 the information that the company supplied to FSIS is a
13 concern for the industry I would think could be corrected by
14 industry.

15 MS. KASTER: Well, that depends. If the
16 information is given in the form of an invoice and
17 compliance comes and makes copies of invoices, then by
18 default, pricing will be on invoices. And if that were the
19 information that you guys had when they requested it, then
20 that would go along with the information you have provided
21 to the states?

1 MALE SPEAKER: Mm-hmm.

2 MS. KASTER: Yeah.

3 MS. DONLEY: But does it necessarily have to go
4 along with the information supplied to the states?

5 MR. MAMMINGA: That was the next thing.

6 MR. WEBER: It doesn't necessarily. Let me say
7 this. It doesn't necessarily have to, okay, as a -- that is
8 something, I guess, that you need to talk about. If we
9 have -- now let me put it this way. We have no use for that
10 information. We don't use it for the purposes of recalls at
11 all.

12 MS. KASTER: Right.

13 MR. WEBER: It just happens to be there --

14 MS. KASTER: Exactly.

15 MR. WEBER: -- when we pick up, you know, if we
16 use invoices.

17 MS. KASTER: You would be assuming that he would
18 sort through --

19 MR. DREYFUSS: Did I get what you stated
20 essentially correct?

21 MR. MAMMINGA: Sure. It sounds like it's about

1 right. Excuse us. You can't do any harm, you know.

2 (Laughter.)

3 MR. MAMMINGA: Neither can we at this point.

4 MS. KASTER: The only fear is that then we would
5 be making the assumption that they would glean the
6 information --

7 MR. WEBER: Yeah.

8 MS. KASTER: -- on that.

9 MR. WEBER: Exactly. And that is --

10 (Simultaneous discussion.)

11 MS. KASTER: -- resource system do that.

12 MR. WEBER: That may well set up a practical
13 problem for us and actually delay the sharing of the
14 information if we need to go through, in some of these cases
15 and especially in a large recall, maybe hundreds of sheets
16 of paper. And if we needed to go through all of that and
17 sort of, you know, line out the pricing information, it may
18 set up a practical problem and actually delay the sharing,
19 in that sense.

20 MR. MAMMINGA: Would it be possible?

21 MR. WEBER: It is possible.

1 MR. MAMMINGA: Just to kind of organize, let's go
2 through the kinds of parameters, and then go back and nail
3 down the specifics that you may have problems with, you
4 know, or you want to talk about.

5 MS. DONLEY: Can I throw another issue out on the
6 table? Thank you. Because there were a couple areas of
7 concern that I sensed when this issue came up on the table,
8 you know, primarily from members of industry, one being the
9 pricing, the pricing issue. And you know what? I can
10 understand that. That makes sense.

11 Number two is the fact of how is the information
12 going to be controlled as far as getting to its destination
13 and how are they going to make sure that it gets in the
14 right -- the information gets in the right hands?

15 So I would just like throw a proposal out on the
16 table. And I kind of alluded to that in today's meeting.
17 And that would be, is that -- listen, the purpose to even
18 start proposing this process is because it is going to help
19 get -- ideally get the suspect product off the shelves and
20 out of the marketplace quicker. So I would like to suggest
21 that this be done on a routine basis, not that the states

1 come to FSIS to ask for the information, but rather that
2 FSIS automatically send the information to the states or the
3 local governments only with the information they need to
4 have, and that would be redacting prices and things like
5 that.

6 Then, instead of it being a passive -- and there
7 will be designated officials in the states as far as who
8 this would go to, that they don't have to sign up, either,
9 each time stating that they will not share this stuff, that
10 it is a one-time thing. It is almost that the states would
11 be signing some sort of an agreement on a year or an annual
12 basis and that there is a designated person in those state
13 offices who is to receive that information.

14 MR. MAMMINGA: Nancy, we have 26 cooperative
15 agreements in place right now doing exactly that. I get all
16 sorts of proprietary information from FSIS on ongoing
17 investigations because I have signed -- my secretary of
18 agriculture has signed cooperative agreements for
19 operations, compliance, and cross-utilization of employees.
20 Those are in place.

21 We trade back and forth the invoices that you talk

1 about --

2 MS. KASTER: But who does that cover in the state?
3 What groups, what regulatory groups?

4 MR. MAMMINGA: It covers the meat and poultry
5 inspection program because in our act --

6 MS. KASTER: But this is broader. This could go
7 more broadly.

8 MR. MAMMINGA: Yeah. But let's --

9 MS. KASTER: It would depend where the agreements
10 cover.

11 MR. MAMMINGA: Yes.

12 MR. WEBER: This likely would.

13 MR. MAMMINGA: Sure. And in fact, in any state,
14 there might not be just one state entity that gets us
15 information.

16 MS. KASTER: Exactly.

17 MR. MAMMINGA: There might be five or two.

18 MS. DONLEY: Well, then all five of them sign.

19 MR. WEBER: Exactly.

20 MS. DONLEY: I mean, there would have -- there has
21 got to be some level of trust and --

1 MR. MAMMINGA: There is. And you can do this by
2 having a cooperative agreement, and then the language of
3 that cooperative agreement indicates quite clearly the
4 limitations of it and the penalties for -- in this case, for
5 not maintaining confidentiality. I mean, in the Iowa Meat
6 Inspection Act, there is a whole section, just like the
7 federal act, that has to do with proprietary information. I
8 have the recipes, the formula, the processing procedures of
9 a couple of hundred meat processing businesses out there.
10 And so we all have to be sworn to maintain this
11 confidentially, or under penalty of law, a criminal penalty.

12 And this can all be done through, I think, cooperative
13 agreements.

14 And, as you indicate, the industry wants to have
15 some assurance that these cooperative agreements (a) mean
16 something, right, and (b) will be enforced because this
17 whole system comes tumbling down if and when somebody spills
18 the beans.

19 MS. DONLEY: And how long has your state had these
20 agreements?

21 MR. MAMMINGA: For 30 years.

1 MS. DONLEY: And in that time, the beans have not
2 been spilled?

3 MR. MAMMINGA: Never.

4 MS. DONLEY: What about the other 25 states where
5 there is --

6 MR. MAMMINGA: As far as I am aware -- and I have
7 been president of the National State Directors Association
8 for a couple of years, and lots of other stuff -- but I am
9 not aware of a single instance of a breakdown in that trust
10 between the state departments of agriculture -- and health,
11 at one time, in three states, where their inspection program
12 operated out of their state department of health instead of
13 their department of agriculture.

14 Cooperative agreements, I think you can probably
15 share with us as well, and maybe all of you, that it is a
16 pretty common tool amongst government agencies to do a lot
17 of things, from funding to proprietary information sharing,
18 and cooperatively working together on certain -- whether
19 they be civil, administrative, criminal matters.

20 So it is a pretty longstanding tried and true --

21 MS. DONLEY: Tried and true, yeah.

1 MR. MAMMINGA: However -- and I'm going to play
2 the devil's advocate here -- the Iowa Department of Health
3 may want to sign up for a cooperative agreement on this.
4 Who else could they be? I mean, I don't know. You know,
5 again, I could go back to my state.

6 MS. KASTER: A DNR, an EPA.

7 MR. MAMMINGA: There you go.

8 MS. KASTER: An OSHA. I mean, it can get pretty
9 broad. And I would just think that we would want to --

10 MS. DONLEY: I don't see where an OSHA.

11 MS. KASTER: Well, if it was a bacteriological
12 hazard --

13 MR. MAMMINGA: What if it was a --

14 MS. KASTER: -- that people have been exposed to.

15 MR. MAMMINGA: -- safety.

16 MS. KASTER: EPA, if it is -- I mean, just like
17 EPA goes in and they want to look at lagoons to see if there
18 is bacteria in there that can be wafting through there into
19 people's houses. I mean, this stuff is starting to cross
20 more and more lines all the time, so --

21 MS. DONLEY: But the purpose here is it is with

1 FSIS to recall -- you know, help facilitate a recall of
2 certain of product. And OSHA and EPA wouldn't get involved
3 in those types of product recalls.

4 MR. MAMMINGA: You are now at the first question
5 that we has been put to us, if you read it, and that is,
6 what do we think about that? And, you know, in my little
7 perspective, this isn't anything new for us in Iowa, and
8 provides nothing that we don't already have. So from my
9 perspective, it is hard to say gee willikers, there is a
10 great need for this. I can get anything I want right now
11 from FSIS because we work together on these things.

12 Every recall -- do you ever look at a recall? Do
13 you get them from FSIS?

14 MS. DONLEY: Mm-hmm.

15 MR. MAMMINGA: What is the last thing --

16 MS. DONLEY: About twice a week.

17 MR. MAMMINGA: -- that it says on the recall?
18 Other agencies involved. Ninety-nine out of a hundred times
19 it says none. But every once in a while -- there was one a
20 while back that said South Carolina Department of
21 Agriculture. The recall is probably a TA plant that is

1 state staffed and federally supervised, you know, those
2 sorts of things. It happens. And for the most part, for
3 the most part, those things come out with no other agencies
4 involved. When I look at a recall, I look at where was it
5 distributed, and did they ask me for any help.

6 MS. KASTER: I don't think under the intent -- I'm
7 not saying -- the intent is good. At first blush, it is
8 like just like you're saying, totally logical, no problem.
9 I think where people get worried is just when you start to
10 whatifing and how wide is the information going to get used.
11 Yeah, for purposes of making an effective recall, I agree
12 with what was said this afternoon. I mean, the more product
13 that we can get retrieved the more quickly, the better. But
14 somehow these things never end up being that simple. And
15 use has the potential to be more widespread than just for
16 that, once it has been put into that arena.

17 MS. DODGE: And now is the time to talk about the
18 what-ifs, isn't it, to generate those things that might not
19 have been considered as part of this proposed rule so that
20 you can get feedback to the agency so they can modify the
21 proposed rule to take into account possibly unforeseen -- or

1 foreseen circumstances?

2 MR. MAMMINGA: Probably is the idea -- let's
3 answer the first question. Do we -- is there agreement it
4 is a good idea, but there may be some buts?

5 MS. DODGE: I'd like to make a suggestion.

6 MR. MAMMINGA: Sure.

7 MS. DODGE: My suggestion would be that it doesn't
8 go far enough. And I have a state of California example.
9 There was a Safeway in a small town in California that
10 recalled ground beef that had been ground at like a grinder,
11 distributor place in Los Angeles, and had been tested at the
12 retail level at this one Safeway up in northern -- or
13 central northern California. And it said in the press --
14 and so USDA issued a recall, and then the recall said if you
15 have any questions, you can call this public relations
16 officer at the Safeway store.

17 So I called her, and I asked her -- well, I said
18 to her, you know, I don't think the product was contaminated
19 in your store. I think it was contaminated where you got it
20 from. And she said, right, it was. It came from this big
21 distributorship in Los Angeles. She gave me the name. I

1 don't remember who it was. So I said, well, isn't it
2 conceivable that that distributor could have sent shipped
3 product to all of the Safeways in California, or to other
4 grocery stores in California. She said not only is it
5 conceivable, it is probable. And I said, well, who is going
6 to go there to see if -- to get back and test there to see
7 if there is product -- if there is contaminated product
8 there. And she said to her knowledge, no one was. In other
9 words, it only goes from Safeway, you know, they try to get
10 it back from their customers because it was tested, you
11 know, by compliance at the retail level, and it wasn't going
12 to go back the other way.

13 So it would seem to me that this rule to really be
14 effective should be going both directions. It should be
15 going -- when it is tested -- when it is discovered at the
16 retail level, and they try to recall it from the customers,
17 it ought to go back to where it came -- as far back as it
18 was contaminated up the distribution chain and then go out
19 from that point. Does that make sense?

20 MR. MAMMINGA: That is what a recall does now.
21 That is exactly what they do.

1 MS. KASTER: She didn't seem to think that that
2 happened. She said --

3 MR. WEBER: Can I just --

4 MR. MAMMINGA: Sure.

5 MS. KASTER: Sure.

6 MR. WEBER: Two things. This particular rule is
7 really -- you know, to try to clarify, is really just
8 talking about the recall process. I think what you are
9 describing is really an attempt to trace back to the source
10 of the contamination. In that particular case, or any case
11 like that, a particular sample collected at a retail store
12 that was ground at that retail store by definition and
13 really scientifically can only legally represent the product
14 that was ground there through that system. It is difficult
15 then to project to any other product.

16 Those samples are a product that are ground at the
17 retail store. We don't have then information or evidence to
18 go beyond it. However, we do in every case like that,
19 whether it is at, you know, a retail store or at a federal
20 plant that happens to be a grinder, we do investigate and
21 attempt to trace back to the source of contamination,

1 including collecting other samples of ground meat that may
2 have come to that retail store or whatever it happens to be.

3 But I think you actually -- with that question,
4 you are branching into sort of on a different tangent than
5 really I think that this is talking about.

6 MS. DONLEY: But I think, though, that it is going
7 to lead to probably a broader recall, is what --

8 MR. WEBER: And sometimes they do.

9 MS. DONLEY: If I'm paraphrasing --

10 MS. DODGE: Right. That is what I'm saying --

11 MR. WEBER: In fact, sometimes they do.

12 MS. DONLEY: Right.

13 MR. WEBER: When we do do the trace-back -- there
14 is a recent example. There was a recall of beef that was
15 ground, ground beef, at a retail store in North Carolina,
16 which then in fact, through the trace-back effort, led to a
17 rather large recall of a company. I believe that was in
18 Nebraska, okay? And they recalled quite a sizable amount of
19 ground beef.

20 So the system is in place, I think, as Mike is
21 saying.

1 MS. DODGE: So you're saying you always go back.

2 You always go back?

3 MR. WEBER: We -- let me say, we, in each case,
4 attempt to trace back to find the source. We do not, as --
5 you know, I don't know the lady that spoke with you from the
6 Safeway store. We cannot extend the scope of a given recall
7 based on a sample that was collected and ground at a retail
8 store, you know, in a local -- in one locale to product that
9 may have been ground at a federal plant some place. But we
10 will sample, we will make every attempt to trace back to the
11 source of the contamination.

12 MS. DONLEY: Well, for the most part -- and we're
13 talking here about the product probably arrived in the
14 retail store in a chub (phonetic), as a chub.

15 MR. WEBER: Yes.

16 MS. DONLEY: And then gets further ground.

17 MR. WEBER: Right, exactly.

18 MS. DONLEY: Now the chub has got an identity.

19 MR. WEBER: Yes, correct.

20 MS. DONLEY: And so they say, okay, we get our
21 chubs from --

1 MR. WEBER: Right.

2 MS. DONLEY: -- XYZ Company.

3 MR. WEBER: Right.

4 MS. DONLEY: Do you then go back and say, okay,
5 this is lot so and so from XYZ Company?

6 MR. WEBER: Mm-hmm.

7 MS. DONLEY: Where did -- let's go back to the
8 distributor, and where did it go to, as they trace back, and
9 then back to --

10 MR. WEBER: That's exactly what we do. And what
11 we do then is get a sample of that chub and test that. And
12 that -- oftentimes you will see them linked, the recalls
13 from the retail stores, and then we go back and test the
14 chubs, and if we get a positive, you know, from that intact
15 chub, yes, that will drive in, you know, often then, you
16 know, a rather large recall.

17 MS. DODGE: But if there is nothing left at this
18 place anymore because this sample was taken --

19 MR. WEBER: Then what we will do is look at their
20 records and/or their distributor's records to determine what
21 particular lot of meat they may have ground, or lots of meat

1 -- I don't want to say it is only one every time -- and go
2 back and sample those, wherever we may find them. We may
3 actually find the product across the country at some other,
4 you know, at some other retail store or some other
5 distributor or whatever have you.

6 I guess -- I mean, that is all good, but it really
7 is outside the scope, I think, of what we are asking here.

8 MR. MAMMINGA: Where we have been discussing the
9 quality of recalls, even the specifics of what should be
10 done, and really, the only issue before us is what is FSIS
11 going to share with the states.

12 MS. DONLEY: And in what form.

13 MR. MAMMINGA: Or other federal agencies, and in
14 what form. You can get into the -- I'm not going to leave
15 it there. I think there are issues there that maybe could
16 be discussed or improved or resolved. Right now, what we
17 are -- now that we have all said what we had to say about
18 that, I think we are on the issue of what are they going to
19 share with the states and other federal agencies, and how.

20 You know, Nancy, to be honest with you, I hadn't
21 thought about that because stuff comes to me by fax all the

1 time, every day. But the how of it is important, especially
2 once you start getting into proprietary information. I
3 mean, I don't know how secure fax machines are and things
4 like that, e-mail, you know. But that will be an issue. So
5 the how of it is something we are going to have right down
6 as a concern. How are you going to do that and maintain the
7 confidentiality that you are expecting of us?

8 MS. DONLEY: But you know what? I'm a real estate
9 agent, and we get confidential faxes all the time from
10 attorneys and clients, and we'll get offers, you know, real
11 estate contracts that will come across via fax. There is a
12 certain amount of things that you can control, and there are
13 certain things you can't control. What you can control is
14 that you know that, okay, I have a person at this end, at
15 this fax number who has signed a memorandum of agreement,
16 and that we are going to provide this information to that
17 person.

18 Now, if there aren't checks on that other end that
19 they are letting -- have an open-door policy and everyone is
20 traipsing through, which I can't imagine that happening, or
21 there is a mole in there -- there are certain things you

1 just can't control.

2 I would like to see the best -- and you said there
3 is a 30-year history in Iowa and, you know, 25 other states
4 around the country. I think we have a pretty documented
5 case here of the system working via fax.

6 MR. MAMMINGA: Well, I'll tell you what. Since
7 FSIS is the one that is writing the rules and are going to
8 enter into these cooperative agreements or whatever they
9 come to be as far as the form of them goes, responsibility
10 will be on them to deliver this information to the people
11 that they sign agreements with. So it really isn't of great
12 concern to me. They just got to deliver it to me in
13 whatever way is legal, right?

14 MS. KASTER: Yeah. But don't you have to be
15 comfortable that you --

16 MR. MAMMINGA: Sure.

17 MS. KASTER: -- who of course know can be
18 eminently trusted because, you know, it is not that
19 transition that I'm worried about. It is not, you know, you
20 are Department of Ag.

21 MR. MAMMINGA: Sure.

1 MS. KASTER: It is whether this kind of grows and
2 grows and grows and how it gets controlled within a state.

3 MR. MAMMINGA: Aside from our concerns that --

4 MS. KASTER: It would be like if somebody passed
5 -- I mean, you have very tight controls in real estate over
6 what confidential information you pass. You don't get
7 client lists. You don't get a record of the last quarter's
8 house sales for a particular salesperson from another
9 company. Do you know what I mean? Which is kind of the
10 same level --

11 MS. DONLEY: Actually, you'd be a little bit
12 surprised because --

13 MS. KASTER: Yeah, but my mom is a broker, too. I
14 mean, I --

15 MS. DONLEY: What I'm saying is where you can have
16 this -- you have a couple of people bidding on the same
17 property.

18 MS. KASTER: Oh, sure. But it is not the same
19 as --

20 MS. DONLEY: Now suddenly all that confidentiality
21 is lost.

1 MS. KASTER: But on these large recalls, I mean,
2 this can be sort of a company's last-quarter performance
3 quite easily because it can be on their pricing. I mean, it
4 can totally reflect the state of that company's business,
5 which you wouldn't be privy to across agencies, to use your
6 example.

7 MS. DONLEY: But if we could here just for a
8 minute, let's get the pricing -- let's forget the pricing
9 for the moment, and let's just say that is not even on any
10 information, or it is deleted out somehow. Let me just
11 throw out this other issue that I put out a little earlier,
12 is that I would like to see it as an autopilot program that
13 any time there are recalls that the information gets shared
14 automatically by FSIS with the states involved.

15 MR. MAMMINGA: Is this before or after they --

16 FEMALE SPEAKER: Who is the state? Who is that?

17 (Simultaneous discussion.)

18 FEMALE SPEAKER: Yeah, exactly.

19 FEMALE SPEAKER: And nobody follows up.

20 FEMALE SPEAKER: The followup thing is a --

21 (Simultaneous discussion.)

1 FEMALE SPEAKER: Yeah. That is a whole other
2 issue.

3 MS. DODGE: So why send it to a state that is not
4 going to follow up? I mean, what provision -- isn't there
5 some way to make -- can we think -- or maybe you already
6 know in Iowa. In other words, if we are going to
7 affirmatively send it to all 50 states, and only 16 of them
8 are going to do something about it, I can see that would
9 make Collette upset -- it would make me upset that
10 California is not going to do anything it. It would make
11 Collette upset that that knowledge is sitting in a state
12 where nobody even wanted it, and now it is lying around to
13 get into the wrong person's hands.

14 MR. MAMMINGA: I think -- I'm very willing to
15 admit that I could be wrong, but I don't think you are ever
16 going to put together an auto where they just send it out.
17 Do you think? Do you think that is possible?

18 MR. WEBER: If you were asking for my opinion, no.
19 And let me say this. I think -- and this is the way I
20 understood your question earlier and why I think there could
21 be something possible if in fact we have a cooperative

1 agreement, let's say with Iowa, okay? That piece -- and
2 that's in place, and it satisfies the requirements of the
3 rule of the nondisclosure, and they can protect the
4 information and all of that. Then that piece could in fact,
5 if Iowa informs us that they want this to be automatic, then
6 we could when we have a situation where product is -- has
7 been distributed to Iowa that we would in fact then share
8 that information with them.

9 But I don't think that we would simply send
10 information out to all 50 states or whatever it is on each
11 recall. I think it is both impractical, and I think it sets
12 up a lot of other problems.

13 MR. MAMMINGA: Let's go real world for just a
14 second. Iowa has 99 counties, each with a county health
15 department. It has a department of agriculture, a
16 department of health, and a department of inspection and
17 appeals, three state agencies that all have some
18 responsibilities in food, okay? So there is 99 and 3; that
19 is 102 entities. Every one of those entities gets either --
20 every FSIS recall or every FDA recall or both.

21 Now, we see in the information that is sent out

1 now that Goldkist kumquats out of whatever is recalling
2 175,000 pounds of this, and it was distributed in
3 California, Indiana, Ohio, Iowa, Wisconsin, and Nebraska.
4 That is what it says. So I copy these things. I indicate
5 -- I highlight the information, what is it, where is it
6 distributed in Iowa. I send it to my two compliance
7 officers. Instantly their little noggins are turned on to
8 look for Goldkist kumquats. And if they see them in
9 commerce -- now this is with no interaction with FSIS, no
10 interaction with whatever.

11 They are just looking. And if they see them, they
12 will give me a call and say, hey, Mike, I'm out here in this
13 place, and here is this stuff. What do you want me to do?
14 And I have them get the information. We immediately check
15 it with our district office. And if it was a product, they
16 should go back and if it was on a voluntary recall, they
17 would see that the companies' wishes were followed through
18 on. And if it were even something that was a danger, like
19 as in the case of the company that refused, we would put it
20 under detention, like our federal counterparts would.

21 So you already have all of this going on out there

1 and all we're being asked to say is do you want to put a
2 mechanism in place that will allow others the same vast
3 group who are now getting FDA and FSIS recalls over the fax
4 machine as a matter of daily occurrence. I'm telling you
5 not a day goes by, hardly. Do you want to let them tie into
6 FSIS through some kind of a cooperative, legal, standing
7 document that binds them to the confidentiality laws that we
8 are all bound under, those of us who have access to
9 industries' proprietary information. Do you want to do that
10 so in addition to everything you already know, you will also
11 know exactly where it went and how much of it went there.

12 I think that is about all we are being asked to do
13 here, isn't it? Isn't that about right?

14 MS. DODGE: Yeah. But you don't -- you all don't
15 consider what more might be asked. I mean, that's not part
16 of the discussion, is what else could be asked or what else
17 could be incorporated to --

18 MR. MAMMINGA: I guess I would be glad to make a
19 list of things for FSIS of improvements that could be made
20 in their system, all right? And maybe that should be a
21 subject of a whole meeting. All I'm trying to tackle here

1 is -- I'm telling you, there is 102 entities in Iowa that I
2 know of for a fact that gets us information now without the
3 proprietary stuff. And we're just a little, dinky
4 midwestern state. Imagine other states and how many other
5 agencies. You are looking at literally the possibility of
6 hundreds that could tap into this system, if they are
7 willing to jump through whatever hoops are necessary to do
8 that.

9 So again, you have to ask yourself, do we think
10 that is a good idea.

11 MS. DONLEY: I think if the motive is to -- and
12 the goal is to facilitate faster recalls; hence, offer the
13 public more health and safety factors, the answer is clearly
14 yes, that this is what we want to do.

15 MR. MAMMINGA: I accidentally read the rule. It
16 is kind of scary for me to read rules. But it does say in
17 here the regulatory text of this proposal rule limits the
18 sharing of information to recalls. So that's the regulatory
19 text. So this is where we can go into your thought, you
20 know, there is a whole pile of opportunity for fixing,
21 correcting, improving, adjusting, and making better. But

1 considering the language of their rule limits us to consider
2 the sharing of information, maybe we should just address
3 that and then find out other ways to petition FSIS with all
4 sorts -- we might even be able to see our way through this.

5 But I think I'm hearing -- in fact, I think I have
6 heard from everybody I talked to that the idea of knowing
7 where product went and how much of it seems to be a useful
8 tool, if not a good idea --

9 MS. KASTER: If not an existing tool.

10 MR. MAMMINGA: Excuse me?

11 MS. KASTER: If not an existing tool.

12 MR. MAMMINGA: If not an existing tool, at least
13 one that would be available to those who are willing to sign
14 up for it and live by its requirements.

15 So I didn't talk to anybody today in our whole
16 committee that seemed to be negative about the merits of
17 this proposed rule. Would you somewhat agree to that?
18 Okay. So we can answer the first question, that there is
19 merit to knowing exactly where and the quality of products
20 being recalled. There is merit to that.

21 Then if you would -- I think all of our real

1 concerns in discussion have been either in three or four
2 because if you look at two, how best could this regulatory
3 change be implemented in cooperation, well, you pick the
4 legal avenue of a cooperative agreement, a memorandum of
5 understanding, legal ramifications. I'm not a lawyer. You
6 are a lawyer?

7 MS. DODGE: I'm afraid so. Guilty.

8 MR. MAMMINGA: I work for a lawyer. I have always
9 worked for lawyers. So do you believe that cooperative
10 agreements with the appropriate language would facilitate
11 -- or memorandums of understanding facilitate the
12 creation --

13 MS. DODGE: I'm not familiar with the -- you know,
14 I have never seen these cooperative agreements that you are
15 talking about. But certainly, you know, any kind of a --
16 the rule, as you say, the rule itself seems to provide for
17 that.

18 MR. MAMMINGA: Sure.

19 MS. KASTER: Something that it is based on.

20 MS. DODGE: Yeah.

21 MR. MAMMINGA: So you can call it what you like, a

1 cooperative agreement. You can call it an MOU. A legally
2 binding document, how does that sound? That sounds like I
3 almost went to law school.

4 MS. KASTER: Can I ask one more question about
5 this?

6 MR. MAMMINGA: You bet.

7 MS. KASTER: It says, "FSIS to share with other
8 state agencies." So is that any state agency?

9 MR. MAMMINGA: Yes.

10 MS. KASTER: Or does it have to be somewhat
11 related to food safety regulations?

12 MR. WEBER: It might be any state agency.
13 However, in the rule and I think as we go through, we really
14 are talking about sharing information for the purposes of
15 recall, recall effectiveness checks, and recall audits, so
16 that really I think we are trying to narrow it for those
17 purposes and not because someone -- I don't know what other
18 agencies might have --

19 MR. MAMMINGA: Think about your state --

20 MS. DODGE: You can imagine a public health agency
21 not wanting to know because they are trying to --

1 MR. MAMMINGA: Well, now think about your
2 department of general services that purchases for the school
3 lunch program --

4 MS. DODGE: Oh, right.

5 MR. MAMMINGA: -- and the prisons and the places
6 where people in need have to stay. You kind of want them to
7 know if they are willing to sign up, wouldn't you?

8 MS. DODGE: Unless you get product background --

9 MR. MAMMINGA: Yes, yes.

10 MS. DODGE: -- to let you make purchasing
11 decisions because of --

12 MR. MAMMINGA: No, no. To get product backed in
13 -- like --

14 MS. KASTER: Maybe we are being paranoid?

15 MR. MAMMINGA: Be paranoid.

16 (Simultaneous discussion.)

17 MS. KASTER: -- so often on like --

18 MR. MAMMINGA: I like paranoia.

19 MS. KASTER: These things look so simple at the
20 beginning. You are, like, oh, yeah, it's cheesy, you know.
21 But then, you know --

1 MS. DONLEY: Well, I actually --

2 MS. KASTER: -- people drudge up information that
3 you don't expect to and they have, you know, sort of cross
4 agendas going. And so I'm fully willing to --

5 MS. DONLEY: I kind of see your point. And this
6 is when you started rattling off all of these other things,
7 is that there -- the entities responsible within a state for
8 the recall, of actually getting it and can help and
9 facilitate doing it are not those entities that you
10 discussed. And I don't think maybe they should receive that
11 kind of information.

12 MR. MAMMINGA: I would have to disagree because I
13 have been involved in going and getting stuff back that the
14 state has purchased. The states buys by specifications.
15 You know that. They want it so big, so tall, and so long,
16 so much -- and some not. And once -- you know, a lot of
17 states, including my own, and I hate to use mine as an
18 example -- it may be very different from everybody else --
19 but a lot of states have a central location where they
20 receive stuff, and then they distribute it out in a
21 warehouse. It could be a part of a commercial warehouse, or

1 it could be their own warehouse. And, you know, we have had
2 other foods with problems. Like we have had cherries that
3 were contaminated, contaminated cherries, you know, that are
4 eaten without any further processing. You dump them up into
5 a dish and the kids eat them. Well, you have to be quick.
6 You have to be quick sometimes where that stuff is going.
7 It is consumed.

8 But be that as it may, I see nothing in here that
9 limits it to any particular kind of state agency. Now, if
10 you think we ought to do that -- if you think we ought to do
11 that --

12 MS. DONLEY: Actually, I don't. I mean, I can
13 understand Collette's concern.

14 MS. KASTER: I think we should raise it if we can
15 for the broader group. And again, I'm fully willing to say
16 that I'm paranoid. But I'm just looking here, thinking of,
17 like, states' attorney generals. I mean, if they decide
18 they have, you know --

19 MR. MAMMINGA: You're right on No. 3 right now,
20 which is exactly what they are talking about. What do you
21 see that we're seeing here that could raise problems? So

1 you have a problem here. We see one thing, and that is what
2 Collette -- what do you see?

3 MS. KASTER: Is that term state agencies, is the
4 term state agencies too broad?

5 MR. MAMMINGA: Very good.

6 MS. KASTER: Should that be narrowed down to
7 people that can help with the effectiveness of a recall?

8 MS. DONLEY: I would agree. The public libraries
9 have no business -- you know, it is a state --

10 MS. DODGE: But what about public health agencies?

11 (Simultaneous discussion.)

12 MS. DONLEY: -- facilitate that.

13 MR. MAMMINGA: Okay. And so the first -- I'm just
14 trying to write as you talk. State agencies, is that too
15 broad? The concern being that this should be limited to or
16 encouraged for entities that could help with the recall.

17 MS. KASTER: That are doing what I think it is
18 intended to do.

19 MR. MAMMINGA: Okay. That's a very good word. I
20 always like to look at judicial intent. Intended to
21 facilitate agencies that can assist in a recall.

1 MS. DODGE: Okay. Can I ask you an interpretive
2 question?

3 MR. MAMMINGA: Mm-hmm.

4 MS. DODGE: Does recall -- facilitate a recall,
5 does that mean get the product out of whoever's hands it is
6 and get it back to the person -- the entity that is issuing
7 the recall only, or does that also include hospitals, public
8 health agencies that -- like the state of California has --
9 you know, a part of its public health department tries to
10 monitor and figure out, you know, whether incidents are
11 connected and are outbreaks.

12 Now, that wouldn't be -- those people aren't
13 trying to get product off the shelves or out of people's
14 freezers and back to whoever it started -- whoever issued
15 the recall. They are trying to figure out if there is a
16 connection in --

17 MR. MAMMINGA: The information that goes out now,
18 today, to all of these hundreds and hundreds would provide a
19 lot of that initially. For example, if you knew that
20 Goldkist kumquats were contaminated, were distributed in
21 Iowa, and suddenly physicians were seeing whatever the

1 disease caused by the problem, usually -- I hope bells go
2 off, but maybe they don't. But I don't know whether -- I
3 don't know what this could do to make that better.

4 MS. DODGE: It's not --

5 MS. KASTER: It could be better information on
6 whether or not that recall needed to be broadened out. It
7 would potentially provide -- you don't think?

8 MR. WEBER: Yeah. Let me take off on what Mike is
9 saying. That is exactly the reason why we send the recall
10 notification reports out to hundreds, literally hundreds, of
11 public health agencies across the country --

12 MS. KASTER: So that would already be happening.

13 MR. WEBER: -- to the county level. This is to
14 try to make those types of connections. If -- so I don't
15 really know that this type of information that we are
16 talking about here would, you know, benefit that effort in
17 any way.

18 MR. MAMMINGA: I agree. I think the object of
19 that is to --

20 MS. KASTER: Because they already know. Yeah,
21 you're right.

1 (Simultaneous discussion.)

2 MR. WEBER: -- as in, you know, the Milwaukee,
3 Wisconsin area.

4 MS. KASTER: Yeah.

5 MR. MAMMINGA: They know that now. I think the
6 key to this is to get hold of it, to get it to stop, to --

7 MR. WEBER: To verify -- if I could say, to verify
8 that in fact the company has done what they had agreed, that
9 they have gotten hold of the product and have contacted
10 their customers and so forth, all the way down the line.

11 (Simultaneous discussion.)

12 MR. WEBER: Well, absolutely. And the customers
13 have followed through.

14 MS. DODGE: So you want it as a verification tool.

15 MR. WEBER: Yes.

16 MS. DODGE: I mean, I think of it as a public
17 health tool, but you're looking at it as a verification
18 tool.

19 MR. MAMMINGA: It may be -- it may serve both
20 purposes, even if inadvertently.

21 MS. DONLEY: I do think, though -- I think that it

1 can play a very helpful role for doctors, for the public
2 health field, in the sense of if they are aware of a certain
3 product that has been recalled, and a victim comes in
4 manifesting certain symptoms, they can ask the question and
5 maybe identify what is going on a heck of a lot sooner.

6 Gee, did you by chance buy kumquats.

7 MR. MAMMINGA: But that information is out there
8 now. It tells you the state, even the area. It just
9 doesn't tell you exactly what stores that bought it. It
10 doesn't tell you the food chain and all.

11 MS. DONLEY: Well, but they also know that this
12 chain of stores is in this location. I'll tell you what. I
13 as a consumer -- now think about this. I as a consumer many
14 times will buy something, and I won't necessarily -- even if
15 it is a package -- let's just say it is an unbranded type of
16 product. I will not be able to tell you what brand of
17 potatoes I buy. I'll use potatoes as an example. But I do
18 know that I buy my potatoes at Jewell (phonetic).

19 MR. MAMMINGA: There you go.

20 MS. DONLEY: So if you can say, gee, did you buy
21 potatoes at Jewell, and that is why you are coming in and

1 you are sick, did you by chance -- did you have a meal
2 prepared with potatoes from Jewell, you can then -- that is
3 going to be very beneficial to the public.

4 MR. MAMMINGA: So this will be -- this will
5 provide some public health assistance.

6 MS. DONLEY: Yes, absolutely.

7 MR. MAMMINGA: And it will, even though it might
8 be inadvertent -- the object, going back to FSIS's thinking
9 when they wrote the proposal, the object was to facilitate
10 by verifying that companies have got control of the product,
11 had run out to the places that they sold it to, if that is
12 the object. And a side benefit from that is --

13 MS. DONLEY: Exactly.

14 MR. MAMMINGA: -- just what you said. That's
15 good.

16 MS. DONLEY: It is going to have a further benefit
17 even than --

18 MR. MAMMINGA: Collette, I would like for you to
19 expand on this a little bit, the idea -- when you talk about
20 state agencies and this business about that being too broad,
21 playing to an audience that can't help, that doesn't know,

1 there won't be any benefit, how are you going to define it?

2 MS. KASTER: Yeah. I don't know. This kind of
3 language to the effect that state agencies -- again, like we
4 said before, we can facilitate a recall in the manner -- I
5 don't know. I mean, the language would have to be a little
6 vague.

7 MR. MAMMINGA: I'd like a little -- throw us out
8 some words of wisdom.

9 MS. KASTER: Okay.

10 MR. MAMMINGA: Already you'd say it was in the
11 intent.

12 MR. WEBER: I think we need to get back to a
13 couple of things, that the recalls are conducted by the
14 companies. And let me just say, often when you get into
15 discussions of recalls, you actually wind up with confusion
16 because the recalling entity is the company. It is the
17 regulators' roles, in FSIS or state agencies or FDA or
18 anybody, to verify that in fact the companies have conducted
19 the recalls in the manner that they agreed to, and that
20 anyone who were -- and we use the jargon consignees or
21 distributors of the product -- anyone down the line has in

1 fact followed the instructions of that recall, which may
2 include further subrecalls, you know, those entities getting
3 the product back from others.

4 What I think we envisioned here was going back --
5 and this is based on requests that we have gotten from a
6 number of individual states, okay? What we envisioned here
7 was providing them the information so that the state
8 personnel could in essence perform the same type of function
9 that we are performing at the field level, our compliance
10 officers, okay, and in fact leverage that resource, that
11 compliance officer resource.

12 MR. MAMMINGA: There is the active word, leverage
13 resources.

14 MR. WEBER: Yeah.

15 MR. MAMMINGA: And that --

16 (Simultaneous discussion.)

17 MR. MAMMINGA: And that's in a lot of states that
18 don't have something like -- that's in 24 states that don't
19 have a program or --

20 MR. WEBER: That's right. But some of those 24
21 states are among those who have asked us for this

1 information because they say we have, you know, inspectors.

2 In some cases, they have county health inspectors who are
3 willing and able and want to get the customer list so they
4 can go out and visit the local stores within that county,
5 okay? We would like to be able to utilize that resource to
6 be able to do that. But what I'm further thinking here --
7 and maybe I don't want to get ahead of you all, but it gets
8 into question 4 -- is how best then can FSIS take advantage
9 of the information that they're learning out there because
10 right now, we don't have that mechanism.

11 The county health officer in, you know, XYZ county
12 in Tennessee may discover something that is of real interest
13 to us and the health department and everybody, but we have
14 no mechanism to get that back.

15 (Simultaneous discussion.)

16 MS. DODGE: There is no obligation. There is no
17 obligation to --

18 MR. MAMMINGA: Not even hardly a communication --

19 (Simultaneous discussion.)

20 MR. MAMMINGA: I guarantee you, in my state, a
21 little dinky, peewee Iowa -- I've been there since dirt.

1 And yet, it is not uncommon to run into a county health
2 department in a rural area that doesn't have a clue as to
3 who FSIS is. They hardly know who I am. They'll call and
4 say, well, now, who is that FSIS, et cetera. And I have to
5 tell them the whole story.

6 So we can we hold forth? That is a really --
7 (Simultaneous discussion.)

8 MR. MAMMINGA: And it is really important. It is
9 really important.

10 MR. WEBER: I didn't want to get too far ahead.

11 MR. MAMMINGA: Because the establishing of
12 communication with this mighty agency and all of its
13 resources is very important. Right now, Collette has
14 identified the only problem that I have heard, or maybe that
15 I remembered to write down, and I don't know if we are going
16 to be able to help her, but she has got a real point in that
17 the No. 3 question asks us, you know, are we aware of any
18 problems.

19 Now, we have chosen one they didn't identify. But
20 I think Collette has got it. I think there is some merit to
21 saying do you want to cooperate with every single frigging

1 agency out there? Probably not. But how do you define it
2 so that all who want to know and need to know are included?

3 MS. DONLEY: So that becomes the definition of --

4 MR. MAMMINGA: How defined. Who are those state
5 agencies? And maybe all we should do is recommend to FSIS
6 that they should come up with a better definition of those
7 who need to know. Then the whole committee can holler and
8 talk about --

9 MR. WEBER: If I can throw out then an idea to --
10 maybe if you have a little bit of time now to think about,
11 we may be able to limit that to one or two agencies within a
12 given state, okay? But then if within the state there are
13 50 county agencies and Mike's -- I don't know. I mean, this
14 may be an amendment to the rule, and we may be going far
15 afield. But there could be an amendment to the rule, okay,
16 could be, that if those entities, those counties, entered
17 into the same type of agreement with, say, Mike's agency,
18 that the information could be shared to further leverage his
19 resources.

20 I don't know if that is possible or if it is even
21 desirable. That is what, you know, I guess at five to

1 eight, that's what comes to my mind.

2 MS. DONLEY: Well then, okay. So what you would
3 be saying, then, is that the MOUs would be done with maybe
4 these two state things, and those two state -- have the
5 authority to have MOUs with others.

6 MR. MAMMINGA: I'm afraid --

7 MR. WEBER: I don't know if that's too far.

8 MR. MAMMINGA: -- that my friends in industry
9 would get real nervous with me signing a cooperative
10 agreement with X number of counties. I think you would
11 almost be better -- you know, you'd almost be better -- what
12 two agencies in any state would probably have the most major
13 concern about the specifics of this? Your state health
14 department, for sure, and Ag would probably be next.

15 MR. WEBER: And in fact, that's who we envisioned,
16 and that's who we --

17 MS. DONLEY: What about these others that you were
18 talking about, though, Mike?

19 MR. MAMMINGA: Well, but that's where you have got
20 to have a little faith in me and my FSIS counterparts in
21 doing our job because, you know, if I had a cooperative

1 agreement for this and FSIS sent me a notice that X number
2 went to seven locations in Iowa, you know what? My two guys
3 would be on the road tomorrow making sure that this stuff
4 was being properly taken care of by the company that
5 recalled it.

6 Now, faith and 30 cents will buy you a phone call,
7 you know? I know that, in some places. But we have to
8 trust or try to trust the governments who are charged to do
9 what they are supposed to do. And to me, I think Collette
10 might feel a little more comfortable. Maybe the rest of the
11 committee will hate it. But maybe it should be defined as
12 Ag and the department of health.

13 Now, you know, I can imagine my friendly Jan from
14 Texas, saying, well, now meat inspection in Texas is where?

15 It's in the department of health. No problem, Lee. You're
16 covered. And the same in -- well, it would seem to me that
17 Ag and the department of health.

18 MS. DODGE: Every state has one or the other or
19 both?

20 MS. KASTER: Of the people that Nancy was talking
21 about, what departments would they be under?

1 MR. MAMMINGA: I mentioned the department of
2 education -- or I mentioned the department of general
3 services. In Iowa, we have one state agency that buys for
4 all -- the prisons, the schools.

5 MS. KASTER: But they would look to, though --
6 they would look to those two entities for guidance and food
7 safety matters anyway, right?

8 MR. MAMMINGA: Well, guess what? If I had, again,
9 a confidential, proprietary information recall that said the
10 Iowa Department of General Services was on their list of
11 consignees for 50,000 pounds of product, guess where I'd go
12 tomorrow? See, that's how maybe it would all fit together.

13 MS. KASTER: Because then you would know what to
14 do with it. It's up to you. And they would be totally
15 lost, what to do with it, right?

16 MR. WEBER: Right. But what -- you know, I think
17 what Mike is just bringing up, if the department of general
18 services or the prison, the corrections department, or
19 whatever was one then of the consignees, we would fully
20 expect that the company had already contacted --

21 MS. KASTER: Right.

1 MR. WEBER: -- that particular -- or the
2 responsible people within that department.

3 MS. KASTER: Right.

4 MR. WEBER: If -- I mean, we've had situations
5 where the consignees of a given product was a hospital. And
6 that hospital was contacted directly by the company. I
7 mean, we followed up to verify that that did happen. But
8 they were, you know, contacted directly. So, you know, in
9 that sense, that could be how it all fits together.

10 MR. MAMMINGA: And I'm going to play devil's
11 advocate, and I just want to preach to you, and that is,
12 again, when you say Ag and health, then you immediately
13 create venues of discussion, the what about, what ifs.
14 Maybe we should charge FSIS to do what you've said. Maybe
15 we should just charge them -- you know, because we consider
16 it your responsibility to only entertain cooperative
17 agreements or whatever you -- legally binding agreements
18 with state agencies and federal agencies that can facilitate
19 in followup checks, et cetera, et cetera.

20 I mean, we can go after it however you want. I
21 just have a funny feeling that while Ag and health would

1 probably be the choice, why limit the agency?

2 MS. KASTER: Yeah. I would agree that you --

3 MR. MAMMINGA: They have some judgment.

4 MS. KASTER: -- run the risk of --

5 MR. MAMMINGA: Let's just charge them to enter
6 into cooperative agreements with those state and federal
7 agencies and assist in facilitating the followup or the
8 effectiveness checks. I mean, we can do it. I mean, we're
9 telling them what we think they ought to do. Maybe we ought
10 to sensitize them to that and not try to tell them who they
11 should talk to.

12 MS. KASTER: Yeah. Because sure as heck, there
13 will be a whatif.

14 MR. MAMMINGA: Yeah. All right? So we have an
15 issue here. We're not going to wordsmith it, at least for
16 the moment. Do we have another issue under No. 3, as far as
17 problems go?

18 MS. KASTER: Facilitate under --

19 MR. MAMMINGA: I have no personal knowledge of any
20 problems with food and drug and any of the things that is
21 asked in that question. I mean, I have -- I'm zip.

1 MS. DODGE: Wasn't one of the problems, one of the
2 impeding problems, the idea that there was information that
3 was provided to FSIS by the companies that was proprietary,
4 that, you know, that goes a bit outside the scope of this,
5 in that -- that they're cutting in their company?

6 I'm just wondering if there is a way to create
7 some kind of a system beforehand, in other words, before
8 there is a recall. And you were talking today about, you
9 know, there might be, you know, a very long list of
10 companies where you have these bills of lading or something
11 like that that have --

12 MR. MAMMINGA: Well, that might show pricing
13 information.

14 MS. DODGE: Yeah, right.

15 MR. MAMMINGA: I think the agency is going to
16 resist being put in charge of X-ing out the pricing on
17 everything, just for the facilitating of time and delivery.
18 And a part of this cooperative agreement, MOU or whatever
19 you call it, is, we are going to say, yep, we're going to
20 subject ourselves to whatever the penalties are if we let
21 this information out.

1 So from a selfish standpoint, I would like to say,
2 don't tell me in the first place. I don't need to know
3 that. But if I get it, I'm going to have to keep it a
4 secret and show everybody that I have. That's the challenge
5 of that.

6 MS. DODGE: And there is no advantage to putting
7 that in the proposed rule itself, that when companies supply
8 their list of consignees to FSIS, that they just provide the
9 information that's not going to be --

10 MR. MAMMINGA: Let me give you an example. This
11 is what Collette was talking about. We were investigating a
12 packer in Iowa for selling -- this is not a food safety
13 issue -- for habitually selling short-weight products,
14 cheating their customers, not a lot, just a little on
15 thousands of boxes, you know. So it adds up over time.

16 So my compliance people, once we had done net-
17 weight checks in the warehouse with our state weights and
18 measures people and we had an idea of the length and breadth
19 of the problem, we went back to the packer, and we said --
20 because this was all private label stuff, we said we want to
21 see your records on how much of this you have made for this

1 company. So we have a pile of invoices this big with
2 pricing information on it.

3 That is what she's talking about, because if it
4 were not a net-weight thing, but a listeria or an E. coli,
5 we'd say, how many boxes did you make and we'd get the same
6 thing. So sometimes there isn't time to get the information
7 without proprietary information. So we can't say we don't
8 want it. We're going to get it sometimes. So we're just
9 going to be charged to keep it secret.

10 MS. DONLEY: I think it's -- yeah. And if you
11 break that confidentiality, then --

12 MR. MAMMINGA: Then let them hang us.

13 MS. DONLEY: Exactly.

14 MS. KASTER: Can we say, since we know it is a
15 concern for other people in the broader community, can we
16 say something like, the subcommittee recognizes that there
17 are concerns with proprietary information that may be forced
18 to be released as part of this information, but that we are
19 counting on -- that's a bad word. Somebody help me.

20 MR. MAMMINGA: Let's say exactly what's on your
21 mind, that in this regulation it is understood that not only

1 customer lists and quantity lists, but pricing and perhaps
2 other proprietary information will be held -- or the agency
3 will be held accountable for that, however you want to say
4 it.

5 MS. DONLEY: But that's not really in the rule.
6 That's in the memorandum of understanding.

7 MR. MAMMINGA: Yes, it will be.

8 MS. KASTER: But it is them being held accountable
9 as the purveyors of the information?

10 MR. MAMMINGA: That cooperative agreement hasn't
11 been written yet. So we're just admonishing FSIS that
12 they'll have to include everything in there.

13 MR. WEBER: But the rule does call for something
14 like --

15 MR. MAMMINGA: Yeah.

16 MR. WEBER: -- an MOU or cooperative agreement.
17 Those are those written statements that we're talking about
18 in the rule.

19 MR. MAMMINGA: All right. So do we want to say
20 something --

21 MS. DONLEY: Well, it actually says it here on

1 this first page of our handout. Those bullet points there
2 actually address that. It says, "State agencies would be
3 required to provide a both written statement establishing
4 authority to protect confidential commercial information
5 from public disclosure and a written commitment not to
6 disclose any such information provided by FSIS without a)
7 the written permission of the submitter of the information
8 or a written confirmation by FSIS that the information no
9 longer has confidential status." So doesn't that cover it?

10 MS. KASTER: I think so. Let's just -- if we
11 could just demonstrate that we discussed it in the
12 subcommittee --

13 MS. DONLEY: That it could be something that --

14 MS. KASTER: -- and that we feel like this would
15 be -- that those things would be covered here and that we
16 want to, you know, sort of make sure that everybody
17 understands that there's issues that people are concerned
18 about, but like Mike says, people probably have anyway and
19 Katie (phonetic), you know, made a decent point that --

20 MR. MAMMINGA: Well, sometimes you just have to
21 say it in front of everybody, to let them know that you

1 thought about it.

2 MS. KASTER: Yeah, exactly, exactly, because if we
3 don't let them know that we talked about it, then we'll
4 spend God knows how long on it.

5 MS. DONLEY: Half an hour on it.

6 MS. KASTER: Exactly.

7 MR. MAMMINGA: Okay. Can we -- what else do we
8 want to say under No. 3? I mean, we've identified the state
9 agency problem. We haven't wordsmithed it yet. We've
10 talked about the proprietary -- all of the proprietary
11 information. We haven't wordsmithed that yet. But are
12 there other potential problems that you see there? I can't
13 think of any. That doesn't mean there aren't any?

14 MS. KASTER: Is it three or four where --

15 MR. MAMMINGA: Three.

16 MS. KASTER: -- where we talk about -- or maybe it
17 says that in that same -- what would be -- what would happen
18 to somebody that did breach that confidentiality?

19 MR. MAMMINGA: Well, that would be under the
20 criminal -- they will -- there is either a federal statute
21 or a state statute or both. But there will be a federal

1 statute covering this.

2 MR. WEBER: Actually, I'm not quite sure that
3 there is a federal statute that covers confidential
4 commercial information.

5 MR. MAMMINGA: Well, there has to be. The agency
6 has all of the processes and all of the procedures and
7 ingredients.

8 MR. WEBER: I think -- certainly I would say if a
9 given state agency breached the MOU or the agreement that we
10 entered into, they certainly would not receive any more
11 information.

12 MS. KASTER: But would they really not?

13 MR. WEBER: Yeah.

14 MS. KASTER: I mean, if it was important for them
15 to do business in their state and it was important to
16 protect public health, would you really stop sending them
17 information because of a breach of one individual that, you
18 know, some renegade --

19 MR. MAMMINGA: Well, let's think about what's out
20 there now.

21 MS. KASTER: And wouldn't that be sort of like

1 throwing the baby out with the bathwater for the purposes of
2 what -- of what's trying to happen here.

3 MR. MAMMINGA: You have never heard of a
4 documented case of an FSIS employee telling how to make
5 Pella (phonetic) bologna today. And that's just as much a
6 proprietary --

7 MS. KASTER: Oh, but there are -- oh, there's
8 plenty of equivalent or worse --

9 MR. MAMMINGA: Do you mean, does it happen?

10 MS. KASTER: -- side dialogue that goes on.

11 MR. MAMMINGA: Perhaps. But, you know, if we are
12 talking about case history, case law, I know of none.

13 MS. KASTER: No, there's no case law. I agree.
14 But does it occur? But does that happen?

15 MR. MAMMINGA: It could. Espionage in the real
16 world happens.

17 MS. DONLEY: But you're dealing with a level here
18 of -- a professional level that is not going to, you know,
19 wreck their career or destroy their job.

20 MR. MAMMINGA: Would it be okay --

21 MS. KASTER: With him, I agree with that, with his

1 county health guy that doesn't even know who FSIS is and,
2 you know --

3 MR. MAMMINGA: I guarantee, I think we can sell
4 this.

5 MS. KASTER: You have got all levels of
6 professionalism. I don't dispute what you're saying, but
7 there is a lot of levels of --

8 MR. MAMMINGA: I think that we can sell this to
9 the most vocal, concerned people, maybe even you, Collette,
10 if --

11 MS. KASTER: I'm certain I'm not that person.

12 MR. MAMMINGA: If we simply say that FSIS will
13 have -- will provide adequate penalties for improper
14 disclosure -- how did I say it? I think -- it even sounds
15 good to me. Adequate -- FSIS will provide adequate
16 penalties for improper disclosure.

17 MS. DODGE: I think in the Freedom of Information
18 Act already, there is a provision. I think it's a criminal
19 violation if you fail to -- if you release information that
20 by law is supposed to be --

21 MR. MAMMINGA: Under Freedom of Information,

1 there's a penalty both ways. If you don't give it out and
2 you're supposed to, or you give it out and you're not
3 supposed to, they get you both ways.

4 MS. DODGE: But I think it's a criminal penalty in
5 the Freedom of Information Act. Isn't this --

6 MS. DONLEY: This is an exemption.

7 MR. MAMMINGA: I would bet you --

8 MS. DODGE: This is an exception to the exemption,
9 isn't it?

10 (Simultaneous discussion.)

11 MS. DONLEY: -- the Freedom of Information Act.

12 MS. DODGE: But if they miss -- but, in other
13 words, I'm saying, can't you just reference the same
14 penalties that already exist? I think your legal department
15 should look at it.

16 MR. MAMMINGA: I would bet you money, just -- I
17 haven't read the federal statute for a couple, three days.
18 But I know that my own statute was patterned very similarly
19 after it. And I would just bet you lunch that there is
20 language about the release of proprietary information in the
21 federal act right now. So all that FSIS has to do in these

1 cooperative agreements is to provide notice that there are
2 adequate penalties for improper disclosure. I think that's
3 all you would have to do. And to go back to the other
4 concern --

5 MR. WEBER: I would feel comfortable with
6 something like that, that would be written into the
7 cooperative agreement or the MOU, that there would be the
8 understanding of -- you know, a penalty, whatever that was,
9 for the improper disclosure, because that clearly would be a
10 violation of this particular regulation and --

11 MR. MAMMINGA: Sure.

12 MR. WEBER: -- whatever.

13 MR. MAMMINGA: I'm sure there is adequate language
14 out there that we could probably find if we got the statutes
15 out and read them. But I'm sure --

16 MS. DONLEY: It is not our job.

17 MR. MAMMINGA: We just need to say that. That's
18 our job, to say great things. All right. We've addressed
19 state agencies perhaps being too broad. We haven't
20 wordsmithed it. We have wordsmithed the other concern about
21 adequate penalties for improper disclosure. Does anything

1 else leap off the page at you as far as concerns? I'm
2 trying to clean up No. 3 before we start wordsmithing, which
3 I hate very much, but we will do it.

4 MS. DONLEY: No. Let's go to No. 4.

5 MR. MAMMINGA: Dandy, hallelujah. Okay. No. 4,
6 this is where we come to the point of -- and you mentioned
7 it first thing this morning, how best can we facilitate
8 information back and forth across this highway?

9 MS. KASTER: So that we get the leverage that you
10 just mentioned instead of duplication, so that you know
11 when --

12 MR. MAMMINGA: That was excellent.

13 MS. KASTER: -- his guys went --

14 MR. MAMMINGA: Leverage instead of duplication.

15 MS. KASTER: -- out there, and they sent ten
16 people out there.

17 MR. WEBER: That's exactly what we're looking for.

18 MR. MAMMINGA: Yeah. Now --

19 MS. KASTER: They could be subjective resources.

20 MR. MAMMINGA: We could almost say that. But, you
21 know, we would expect -- I don't have it. It flew out of my

1 brain.

2 MS. DODGE: Can you bring that into the MOU, too?

3 MR. MAMMINGA: What's that?

4 MS. DODGE: That the exchange of information is
5 supposed to work both ways? In other words, FSIS provides
6 the list of consignees to the states, and likewise the
7 states, if they send out their staff to do verification,
8 that they send that information back? Whatever activities
9 they conducted in response to the recall information that
10 they are given about consignees' list, that --

11 MR. MAMMINGA: That's a real good idea. I don't
12 quite know how to say it. But I think that --

13 MS. DONLEY: A feedback.

14 MR. MAMMINGA: -- is a very good idea.

15 MS. DONLEY: That's within good feedback, though -
16 -

17 MR. MAMMINGA: That is very excellent.

18 MS. DONLEY: -- with FSIS.

19 MR. MAMMINGA: How do you want to say it, though?
20 This is wordsmithing, and I'm not very good at it. The
21 object is by joining together into this cooperative

1 agreement, we will provide you this confidential information
2 under penalty such and such. And the other side of that
3 coin is you are going to --

4 MS. DODGE: Report back any activities --

5 MR. MAMMINGA: Share, we'll go over better with
6 the state government agencies, then report back.

7 MS. DODGE: But it doesn't go over so well with
8 those consumers.

9 MR. MAMMINGA: But that's why we have lawyers.
10 You can get out there and harangue them over that. But
11 sharing is positive.

12 MS. DODGE: Okay.

13 MR. MAMMINGA: Reporting is you have given me
14 another job to do. That is just -- what do I care about --
15 like here. I could be wrong.

16 MS. DODGE: Share.

17 MR. MAMMINGA: Share.

18 MS. DODGE: And you said you are not a wordsmith.

19 MR. MAMMINGA: How about the understanding that
20 this cooperative agreement is written with the
21 understanding --

1 MS. DONLEY: No, no, no. Just with the
2 understanding, that the --

3 MS. KASTER: Expectation.

4 MS. DONLEY: That they shall -- will -- shall or
5 will.

6 MR. MAMMINGA: No.

7 MS. KASTER: But then you have to be --

8 MR. MAMMINGA: I hadn't got the breath out yet.

9 MS. DONLEY: Okay. Sorry.

10 MR. MAMMINGA: With the understanding that they
11 damn well better or that they --

12 MS. KASTER: That's better.

13 MR. MAMMINGA: That they shall share information
14 with the FSIS. That could be said better. I'm flapping my
15 trap, and I should be thinking. Say it right, Collette.
16 How should we say it?

17 MS. KASTER: With the expectation that --

18 MR. MAMMINGA: Expectation is good.

19 MS. KASTER: -- the results of their activities
20 would be something back to FSIS.

21 MS. DONLEY: Or it is understood that the state

1 agencies shall share their verification results with FSIS?

2 MS. DODGE: Mike, what is it called when you call
3 your two, when your two compliance guys, when they get, when
4 they get a recall, and you hand them a recall list and say
5 go check if Sunkist kumquats are for sale anywhere in the
6 state? What's the word that you use when you tell those
7 guys to --

8 MR. MAMMINGA: That is impossible. There are
9 3,000 retail outlets in Polk County alone. So, you know,
10 there are literally thousands and thousands of places this
11 stuff could be. The only thing you can do with two people,
12 keeping in mind that 99 counties got the same thing -- that
13 means everybody is sensitized to look. That is all it does
14 unless, as in some instances in the past, FSIS would give me
15 a call and say, all of our people are here, here, here,
16 here. We are looking for the last 500 pounds of this. It
17 is there; have you got somebody that can go today? I say
18 sure.

19 MS. DODGE: Now what would you say to that person?
20 What would the sentence be that you would say to that
21 person?

1 MR. MAMMINGA: I would say, Frank, go to Des
2 Moines cold storage, look for Goldkist kumquats, lot No.
3 782-4. Ask the, check their papers, see if they have it.
4 If they do, all me back. And then I will see if the company
5 -- you know, then we have to do -- and I may direct him to
6 detain it. But first, we got to Frank.

7 MS. DONLEY: But what you are saying is --
8 basically, what you are saying, though, is a report back to
9 me. So we're just --

10 MR. MAMMINGA: I might tell him to detain it up
11 front, depending on what the problem is.

12 MS. DONLEY: Right. But nonetheless, is you are
13 going to expect Frank to --

14 MR. MAMMINGA: To report back.

15 MS. DONLEY: -- report back to you.

16 MR. MAMMINGA: And that is all we are expecting of
17 these folks.

18 MS. DONLEY: Except we can't use those terms
19 because it is politically incorrect.

20 MR. MAMMINGA: Well, understood. But I kind of
21 like language -- when you enter into a cooperative

1 agreement, there is kind of a feeling that it is a two-way
2 street, right?

3 MS. DONLEY: Right.

4 MR. MAMMINGA: I mean, it isn't all just me
5 pouring into your glass. So we want to say, if I were the
6 agency, that I am going to enter into this with you. And it
7 is my expectation that if you find products subject to a
8 recall, that you will share this information with my agency.

9 MS. DODGE: Well, could we say this? Can we say
10 that the MOUs or the cooperative agreements -- the
11 agreements entered into --

12 MR. MAMMINGA: You would have to call them
13 documents.

14 MS. DODGE: -- the documents that are entered into
15 between the states and the -- or the agreements. The
16 agreements that are entered into -- the documents that are
17 created between the states and the FSIS shall include a
18 provision that where the state agencies engage in recall
19 efforts in response to the information provided by FSIS that
20 the states will likewise provide the FSIS with the -- I
21 don't know, with -- you don't want to say report -- with

1 information about the results of the state's investigator
2 activities or recall activities?

3 MR. MAMMINGA: That was a \$10 sentence for about a
4 25 cent -- you know, I mean, you have got \$100 idea. But we
5 got to get it down into like a 25-cent sentence.

6 MS. DONLEY: Is there anything wrong with the it
7 is -- it is understood that the state agencies will share
8 their results with FSIS?

9 MS. KASTER: To meet the objective of not
10 duplicating efforts or to leverage, as you said -- to
11 leverage effectiveness checks.

12 MS. DODGE: I guess I was trying to make a
13 condition. I wanted to say the condition is that if you get
14 the information from FSIS, that you are going to provide
15 information back.

16 MS. DONLEY: Well, yeah. And that would be, like
17 I said, it is just we're making it two sentences, I guess is
18 what I'm suggesting.

19 MS. DODGE: But if it's --

20 MR. MAMMINGA: First of all, you can't make
21 anybody do anything.

1 MS. DODGE: Okay.

2 MR. MAMMINGA: FSIS puts out information today to
3 hundreds of entities and can't make them do a single thing,
4 can't make them go out and look for the product in commerce,
5 can't make them tell if they find it, can't do anything.
6 You have no authority. All you have authority to do is what
7 the law allows you to do.

8 Now you can make me do something because I have a
9 cooperative agreement with you, and you give me half my
10 money. Now try to extrapolate that out into the -- you
11 know, the Minnesota Department of Health. I don't think he
12 is going to be sending them out to make a detention
13 somewhere or to do something. He is going to tell them,
14 look, we're all in this together. Let us know what you
15 find. That is the practical application of what you want to
16 do.

17 And so in your cooperative agreement, all you need
18 to do is have a sentence that admonishes the state to share
19 information, to facilitate what? To facilitate --

20 MS. KASTER: To facilitate -- well, I don't know.

21 MS. DONLEY: Just a recall.

1 MS. KASTER: FSIS encourages states to --

2 MS. DONLEY: Not good.

3 MS. KASTER: -- share -- what?

4 MS. DONLEY: That's just not strong enough. You

5 know what? We don't have to write that in here.

6 MS. KASTER: You won't have to --

7 MS. DONLEY: We're trying to write --

8 (Simultaneous discussion.)

9 MS. KASTER: -- find a way to enforce that. If

10 you say you will, then those --

11 MR. MAMMINGA: We're trying to tell FSIS what we

12 want.

13 MS. DONLEY: Yeah. But we don't have to write it.

14 MR. MAMMINGA: No, no, no.

15 MS. DONLEY: So I'm saying why don't we just say,

16 listen, within this MOU, the responsibilities of the state

17 agencies may be spelled out. And in addition, within the

18 MOU, FSIS is asking that the states respond back.

19 MS. KASTER: Provide information.

20 MS. DONLEY: Provide information with their

21 results.

1 MR. MAMMINGA: Here is the question. What
2 mechanism should be developed to assure that additional data
3 gathered by state and federal government agencies as a
4 consequence are shared with FSIS? Write it into your
5 cooperative agreement.

6 MS. KASTER: Right, exactly, yeah.

7 MR. MAMMINGA: That's all we need to say.

8 MS. KASTER: Yeah. We don't --

9 MR. MAMMINGA: Write it into your cooperative
10 agreement.

11 MR. WEBER: I think then the nuts and bolts of
12 that --

13 MR. MAMMINGA: Yeah.

14 MR. WEBER: We will need to work out --

15 MS. KASTER: With your legal department.

16 MR. WEBER: Yeah. And that there may be other
17 efforts underway that actually that we have going, hopefully
18 that this plays once again, an effort, and you know, an
19 effort that we have going with them that, you know, we
20 suggested a work effort, suggested that we do -- put
21 together one sort of protocol for doing these effectiveness

1 checks and audits and so forth so that we do create this
2 uniform system. And I think this can be a piece of it.

3 MR. MAMMINGA: Let's answer the questions now as
4 they are going to be written out and given to the committee.

5 What do you say? Do you want a new piece of paper, sir?
6 Or do you just --

7 MR. DREYFUSS: Is that what you are trying to
8 get --

9 MR. MAMMINGA: I can't read it that far away.
10 Read it back --

11 MR. DREYFUSS: The MOU document shall include
12 provisions that states share information with FSIS about
13 recall efforts.

14 MR. MAMMINGA: Very excellent. You have done it.
15 You have answered the fourth question. I knew this guy was
16 here for some good purpose. Plus he has other information I
17 enjoy getting. All right. So that is the answer to the
18 fourth one. Should we go backwards and do the answer to the
19 third one? Because the first two are --

20 MR. DREYFUSS: FSIS should limit the MOU document
21 with the states, the agencies which will assist in recalls.

1 MR. MAMMINGA: That's very excellent, Marshall.

2 And what else --

3 MS. KASTER: Do we want to say assist in recalls?

4 Does that make it sound like you're concerned where they
5 are not recalling?

6 MS. DONLEY: How about who directly assists in
7 recalls? Is that better?

8 MS. KASTER: Well, that is just more -- again, to
9 Charlie's point about that the company is actually the one
10 recalling, not -- does that matter here? Is that what
11 we're --

12 MR. WEBER: Well, you could add recall audits or
13 effectiveness checks. If you did that, or recall
14 verification, if we use one word instead of four.

15 MR. MAMMINGA: I can certainly live with that.

16 MR. WEBER: Okay. That's -- yeah. I mean, I know
17 what that means, what you wrote there. But --

18 MS. KASTER: Yeah. I think all of us do. But --

19 MR. WEBER: Yeah.

20 MR. MAMMINGA: All right.

21 MR. WEBER: That's fine, recall verification.

1 That's good.

2 MR. MAMMINGA: And --

3 MR. DREYFUSS: Item 2 was FSIS will provide notice
4 of adequate penalties for improper disclosure of proprietary
5 information.

6 MR. MAMMINGA: Very excellent.

7 MR. DREYFUSS: And No. 1 was --

8 MS. DONLEY: Do you want to put say within the
9 MOU? Do you want that in the MOU?

10 MR. MAMMINGA: I thought he said that? Didn't he
11 say that?

12 MR. DREYFUSS: No, I didn't say it for No. 2. But
13 do you want that in?

14 MR. MAMMINGA: Read it again, what you said on
15 FSIS will provide --

16 MR. DREYFUSS: Notice of adequate penalties for
17 improper disclosure of proprietary information is in the
18 MOU?

19 MR. MAMMINGA: Put that in. I think we'll all be
20 happy. And the answer to the first one is yes. Hallelujah.

21 FEMALE SPEAKER: We're actually done on time.

1 MR. MAMMINGA: If you can give us a draft of that,
2 I think we are right. Thank you, sir. You did a very
3 excellent job.

4 MR. DREYFUSS: My pleasure.

5 MR. MAMMINGA: Thank you all for your
6 thoughtfulness.

7 (Whereupon, at 8:24 p.m., the meeting was
8 adjourned.)

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