

Notices

Federal Register

Vol. 68, No. 73

Wednesday, April 16, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 03-001-4]

Declaration of Extraordinary Emergency in New Mexico and Texas Because of Exotic Newcastle Disease

Exotic Newcastle disease (END) has been confirmed in the State of Texas, near the Texas-New Mexico border. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. Previously, END had been confirmed in the States of Arizona, California, and Nevada. The Secretary of Agriculture signed a declaration of extraordinary emergency with respect to END in California on January 6, 2003 (see 68 FR 1432, Docket No. 03-001-1, published January 10, 2003), a second declaration of extraordinary emergency with respect to END in Nevada on January 17, 2003 (see 68 FR 3507, Docket No. 03-001-2, published January 24, 2003), and a third declaration of extraordinary emergency with respect to END in Arizona on February 7, 2003 (see 68 FR 7338, Docket No. 03-001-3, published February 13, 2003).

END is a contagious and fatal viral disease affecting domestic, wild, and caged poultry and birds. It is one of the most infectious diseases of poultry in the world, and is so virulent that many birds die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry. This disease in poultry and birds is characterized by respiratory signs accompanied by nervous manifestations, gastrointestinal lesions, and swelling of the head.

END is spread primarily through direct contact between healthy birds or poultry and the bodily discharges of infected birds or poultry. Within an infected flock, END is transmitted by

direct contact, contaminated feeding and watering equipment, and aerosols produced by coughing, gasping, and other respiratory disturbances. Dissemination between flocks over long distances is often due to movement of contaminated equipment and service personnel, such as vaccination crews. Movement of carrier birds and those in an incubating stage accounts for most of the outbreaks in the pet bird industry.

The existence of END in Texas near the Texas-New Mexico border represents a threat to the U.S. poultry and bird industries. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The United States Department of Agriculture (the Department) has reviewed the measures being taken by New Mexico and Texas to control and eradicate END and has consulted with the appropriate State Government and Indian tribal officials in New Mexico and Texas. Based on such review and consultation, the Department has determined that the measures being taken by the States are inadequate to control or eradicate END. Therefore, the Department has determined that an extraordinary emergency exists in New Mexico and Texas because of END.

This declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of END and (2) prohibit or restrict the movement or use within the States of New Mexico and Texas, or any portion of the States of New Mexico and Texas, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of END. The appropriate State Government and Indian tribal officials in New Mexico and Texas have been informed of these facts.

Effective Date: declaration of extraordinary emergency shall become effective April 10, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03-9321 Filed 4-15-03; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01-040N]

Announcement of and Request for Comment on FSIS' Tentative Determinations on the Availability of *Salmonella* Test Results

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing its intention to make publicly available the results of its testing for *Salmonella* on livestock and poultry carcasses and in raw ground meat and poultry products. The Agency also intends to post the results of all completed sampling sets on its Web site. FSIS conducts the *Salmonella* testing as part of its Hazard Analysis and Critical Control Point (HACCP) verification activities. FSIS is acting in response to a petition submitted by the Center for Science in the Public Interest, suggestions made by meat and poultry processors, and suggestions made by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF).

DATES: Comments must be received on or before May 16, 2003.

ADDRESSES: Please submit one original and two copies of written comments to the FSIS Docket Room, Docket No. 01-040N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 112 Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700. Comments may also be submitted via facsimile at (202) 205-0381. All comments received in response to this notice will be considered part of the public record, and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Ph.D, Acting Assistant Deputy Administrator for Policy Analysis and Formulation, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700; (202) 205-0495.

SUPPLEMENTARY INFORMATION:

Introduction

On July 25, 1996, FSIS published a final rule in the **Federal Register** entitled, "Pathogen Reduction; Hazard Analysis and Critical Control Point (PR/HACCP) Systems" (61 FR 38806). This rule established, among other things, pathogen reduction performance standards for *Salmonella* that establishments slaughtering livestock and poultry and producing raw ground meat and poultry products must meet. FSIS conducts an ongoing testing program to determine compliance with these *Salmonella* performance standards for classes of livestock and poultry products.

FSIS has received a petition from the Center for Science in the Public Interest (CSPI) requesting that FSIS post on its website all plant-specific test results for *Salmonella* in carcasses and raw ground meat and poultry products, and that FSIS post such test results in a timely and relevant manner as they become available. CSPI contends that consumers could use plant-specific *Salmonella* results posted on the FSIS website to determine whether individual establishments are meeting the *Salmonella* performance standard and could make informed purchasing decisions on the basis of that information.

In addition, numerous establishments and industry associations have advised the Agency that it would be very valuable for them to receive the results of each sample as the Agency finishes its analysis during the course of a *Salmonella* set. Timely receipt of this information, the establishments say, will enable them to more readily associate the results with the conditions in their plants at the time the samples were taken and will facilitate corrections and improvements in their operations.

FSIS has determined that, if it makes the results available to establishments on a sample-by-sample basis, the agency will not be able to protect the confidentiality of the results until the conclusion of the collection and testing of full sample sets, as is currently the case. The industry representatives have stated that the opportunities created by having the results available on a timely basis outweigh any disadvantages of the information being publicly available. The NACMCF has expressed similar views.

Based on its consideration of the petition, the NACMCF's recommendation, and its contacts with industry, FSIS is announcing its intention to modify its handling of

Salmonella testing results. The Agency requests comment on its plans.

Background

The Salmonella Performance Standards for Raw Meat and Poultry

In 9 CFR 310.25(b) and 381.94(b), FSIS has set out performance standards for the prevalence of *Salmonella* in livestock and poultry carcasses and raw ground meat and poultry products. FSIS samples and tests raw meat and poultry products in individual establishments to determine the prevalence of *Salmonella* in the products and to determine compliance with the *Salmonella* performance standards.

Prior to December 2001, FSIS used the sample results to directly enforce the performance standards in 9 CFR 310.25(b)(iii)(3) and 381.94(b)(iii)(3). These regulations state that failure to meet the performance standard in three consecutive tests "constitutes failure to maintain sanitary conditions and failure to maintain an adequate HACCP plan." The Agency stated that it would suspend inspection as a result of such a failure because it would not be able to find that the product of an establishment that had failed three sets in a row was not adulterated.

A decision in early December 2001 by the U.S. Court of Appeals for the Fifth Circuit in *Supreme Beef Processors, Inc. v. USDA*, however, limited FSIS' ability to directly enforce the *Salmonella* performance standards in grinding operations. Based on the court's decision, a grinding operation's failure to meet a *Salmonella* performance standard is not in and of itself a noncompliance. However, the failure may be an indicator of noncompliances in aspects of the establishment's total food safety program, such as Sanitation Standard Operating Procedures (Sanitation SOPs) and HACCP plans. Thus, FSIS now uses sample set failures as an indication that there is something wrong in the establishment's HACCP system, and that the system needs to be carefully evaluated by the Agency. However, FSIS does not initiate enforcement actions based on individual *Salmonella* testing results. In addition to the *Salmonella* set failures, FSIS uses other pertinent information in its evaluation of an establishment's HACCP system. This information includes, but is not limited to, summary reports compiled from the evaluations of reviews of the establishment's SSOPs, prerequisite and good manufacturing programs, and HACCP plans by the consumer safety officer or food safety assessment team; documentation of observations and verification activities

of in-plant inspection personnel; and generic *E. coli* and other microbial test results.

Public Release of Test Results and the Freedom of Information Act

The Agency held public meetings on March 6 and December 16, 1997, to inform industry constituents and consumer advocates that FSIS would send individual establishments the results of testing on their own product upon completion of the full sample sets, and that plant-specific results would be released to the public in accordance with the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. § 552).¹ At the December 16, 1997, public meeting, FSIS presented an issue paper entitled, "Public Release of *Salmonella* Testing Results," which outlined the Agency's position.² On April 2, 1998, FSIS published this issue paper in the **Federal Register** (63 FR 16245).³ In this paper, FSIS stated that it planned to "publish annually a report on the *Salmonella* testing program." Since then, FSIS has made the Agency's *Salmonella* test results available on the Web site through a progress report: <http://www.fsis.usda.gov/FOIA/popular.htm>. In this report, FSIS provides *Salmonella* testing results on an aggregate basis for large, small, and very small plants; the percent of products that have tested positive for *Salmonella*; and the prevalence of *Salmonella* with each product category. Prevalence, for the purposes of the FSIS HACCP verification activity, is not a statistical representation of the true presence of *Salmonella* in product. FSIS conducts statistically-based baseline

¹ Transcript of Proceedings, HACCP Implementation Meeting; Washington, DC, December 16, 1997, page 152-153. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. The document may also be accessed via the World Wide Web at www.fsis.usda.gov/FOIA/popular.htm as a related document under the Notices and Directives, and Federal Register Publications section. Transcript of Proceedings, Publication of Salmonella Testing Data; Washington, DC, March 6, 1997, page 3. This document is also available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at www.fsis.usda.gov/FOIA/popular.htm as a related document under the Notices and Directives, and Federal Register Publications section.

² Transcript of Proceedings, HACCP Implementation Meeting; December 16, 1997, Washington, DC, page 151-153.

³ Notice, Pathogen Reduction Performance Standards: Salmonella Testing Data, 63 FR 16243-16245, April 2, 1998. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at www.fsis.usda.gov/FOIA/popular.htm under the Notices and Directives, and Federal Register Publications section.

studies to determine the true prevalence of microorganisms, including *Salmonella*.

FSIS has considered the *Salmonella* test results as information for use by the Agency in its deliberative process on how best to proceed with respect to the establishment involved. Predecisional information can be exempted from disclosure under the FOIA (5 U.S.C. 552(b)(5)). Accordingly, FSIS has not disclosed plant-specific testing results until the set was complete.

The FOIA requires that federal agencies make certain information that is released under the FOIA available to the public in electronic format and by computer telecommunications (5 U.S.C. 552(a)(2)). In response to legislative amendments to the FOIA (E-FOIA), on July 28, 2000, the U.S. Department of Agriculture published a final rule, "USDA Freedom of Information Act Regulations" (65 FR 46335), in which the Department adopted regulations governing the electronic release of information requested under FOIA. Significant in consideration of the CSPI petition is that these regulations provide that one reason to release information requested under FOIA electronically is that "it has become or is likely to become the subject of subsequent requests for substantially the same records." *Salmonella* testing results have been, and continue to be, requested in significant numbers.

Recommendations From the National Advisory Committee on Microbiological Criteria for Foods

On October 8, 2002, the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) made final a report that recommended that the data from the *Salmonella* performance standard program be made public, so as to provide guidance to industry in order that commercial operations may assess their process control.⁴ The Committee points out that, when HACCP systems and other prerequisite programs in ground beef operations are adequate and verified, the measurement of *Salmonella* reflects the total process control, particularly the microbial conditions of raw material. The report also states that the information would be helpful in meeting the *Salmonella* performance standards. In addition, the report

⁴ Final Response, NACMCF Final Response to the Questions Posed by FSIS regarding Performance Standards with Particular Reference to Ground Beef Products, Washington, DC, October 8, 2002. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at www.fsis.usda.gov/FOIA/popular.htm.

recommends that the *Salmonella* test results be made available to each establishment as they become available to facilitate Continuous Improvement Programs. Finally, the report states that making *Salmonella* data that is suitably codified to protect proprietary information available to the public, to the extent possible, should lead to generation of additional data and increased knowledge of the many facets influencing control of enteric pathogens on raw meat and poultry.

The CSPI Petition

As mentioned above, FSIS received a petition dated October 1, 2001, from CSPI requesting that FSIS post on its website all plant-specific test results for *Salmonella* in carcasses and raw ground meat and poultry products, and that FSIS continue to post such test results in a timely and relevant manner as they become available. According to CSPI, consumers could use plant-specific *Salmonella* results posted on the FSIS website to determine whether individual establishments are meeting the *Salmonella* performance standard and could make informed purchasing decisions on the basis of that information.

The petition states that the presence of *Salmonella* positives above the performance standard is an indication that the plant's system for controlling contamination is not working. Therefore, according to CSPI, posting the individual establishment test results on the web would encourage establishments to improve their sanitation procedures because consumers would be less likely to purchase products made by facilities that repeatedly exceed standards. Additionally, the petition states that posting test results on the FSIS Web site could benefit Federal and state health officials in their efforts to track the cause of food poisoning outbreaks and to identify contamination trends based on product type, plant geographical location, and seasonality. The petition also states that posting plant-specific *Salmonella* test results on the FSIS Web site would be consistent with the USDA's implementing regulations for FOIA. Quoting a House of Representatives report, the petitioner states that one of the purposes of the FOIA provisions requiring electronic release of information is to improve public access to agency records and information.

Industry and Consumer Advocate Comments and Concerns

Before and during the March 6, 1997, public meeting referred to above, many

industry representatives raised concerns regarding posting *Salmonella* testing results on the World Wide Web. Some of their concerns were based on the assumption that foreign countries who do not monitor their own products, nor have equivalent process controls established to determine whether *Salmonella* is present on meat and poultry products, could use the *Salmonella* data to discriminate against U.S. product. They argued that use of the data could lead to the following results: (1) A negative impact on U.S. companies' efforts to secure markets and fair prices internationally; (2) use of the data by foreign governments as a pretext for imposing non-tariff barriers against U.S. product and to protect their own domestic industry; and (3) discrimination against specific U.S. products and establishments by foreign buyers if an establishment received positive *Salmonella* test results. In addition, they stated that the context in which the *Salmonella* testing results would be presented would also have an impact on the aforementioned effects.

At the same public meeting, consumer advocates favored publication of plant-specific *Salmonella* data along with the plant name, location, and product line.⁵ They stated that progressive companies would want the results of their *Salmonella* tests known, and that the public is sophisticated enough to accept the fact that there are going to be positive *Salmonella* test results on some raw product.⁶

On the other hand, during the December 16, 1997, meeting, an industry representative opined that, "it would be beneficial for plants to have the *Salmonella* data as it was collected so if a trend was developing, the plant could take some corrective action before the whole series was out."⁷

In the five years that have followed, the concerns expressed by industry about foreign reaction to specific *Salmonella* results have not materialized. However, through numerous informal communications and at scheduled meetings, the Agency has received industry input that correlates with the last comment cited and with the NACMCF's recommendations.

⁵ Transcript of Proceedings, Publication of *Salmonella* Testing Data; Washington, DC, March 6, 1997, page 75.

⁶ Transcript of Proceedings, Publication of *Salmonella* Testing Data; Washington, DC, March 6, 1997, pages 70-72.

⁷ Transcript of Proceedings, HACCP Implementation Meeting; December 16, 1997, Washington, DC, page 153.

Availability of FSIS' Salmonella Testing Program's Results

FSIS now agrees with CSPI and NACMCF that release of the *Salmonella* data as sample results are obtained, rather than at the completion of a full sample set, could lead to the generation of data and information that could be used to sort out which, if any, of the many factors that could influence control of enteric pathogens on raw meat and poultry is actually doing so. FSIS also agrees that providing *Salmonella* data to industry as test results are obtained will allow commercial operations to assess their process control more effectively.

Tentative Determinations

In light of the foregoing, FSIS intends to release *Salmonella* testing results to individual establishments as they become available and before the conclusion of the collection and testing of full sample sets. Receiving this information in this way should allow establishments to more readily identify their process control deficiencies and assess the relative efficacy of their process controls.

The Office of Public Health and Science (OPHS), Laboratory Sample Data Management Staff (LSDMS), has developed a double-folded mechanism to forward *Salmonella* testing results to individual establishments as they become available. First, all *Salmonella* testing results will be available via FSIS' Laboratory Electronic Application for Results Notification (LEARN) system. By maneuvering through the components of this electronic program, an inspector can copy the applicable page and forward it to an establishment's management official as "notification" as instructed by the contents of the LEARN directive—10,200.1. In addition, an establishment can elect to provide OPHS, LSDMS, with an e-mail address, and the establishment's *Salmonella* testing results will be e-mailed to them as they are entered into its internal database. If an individual requests *Salmonella* testing data for an establishment, FSIS intends to respond to the request in turn, generally providing the specific existent information requested. Once a sample set is concluded, FSIS will post the results on its Web site on an aggregate basis (e.g., results will be identifiable only by the establishments' state and district locations). As sample sets continue to be collected and tested, FSIS will regularly update the content of the postings (e.g., by season or quarter) throughout the year. FSIS will not make the establishments' sample-by-

sample results available on its Web site because the Agency is not convinced of the value of posting this information. While the value of this information to the tested establishment is clear, the value to the general public is not. FSIS can see the value to the general public of more frequent posting of information about trends in *Salmonella* testing results than the current annual reports that the Agency issues.

Request for Comment

FSIS is seeking comment on its plan to modify its handling of *Salmonella* testing results. The Agency's final decision regarding the availability of *Salmonella* testing results will be published in the **Federal Register**.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at <http://www.fsis.usda.gov/oa/update/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on April 7, 2003.
Dr. Garry L. McKee,
Administrator.
 [FR Doc. 03-8971 Filed 4-15-03; 8:45 am]
BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Thursday, May 15, 2003. The meeting is scheduled to begin at 10 a.m. and will conclude at approximately 4 p.m. The meeting will be held at The Resort at the Mountain; 68010 East Fairway; Welches, Oregon; (503) 622-3101. The tentative agenda includes: (1) Report on status of 2002 and 2003 projects; (2) Election of chairperson; (3) Decision on overhead rate for 2004 projects; (4) Presentation of 2004 Projects; and (5) Public Forum.

The Public Forum is tentatively scheduled to begin at 1 p.m. Time allotted for individual presentations will be limited to 3-4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the May 15th meeting by sending them to Designated Federal Official Donna Short at the address given below. A field trip to visit Title II projects is scheduled for the next day, Friday, May 16, 2003 at the same location. The field trip will start at 8.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District, 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367-9220.

Dated: April 10, 2003.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 03-9298 Filed 4-15-03; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Catron County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Catron County Resource Advisory Committee will meet in Reserve, New Mexico, on May 1, 2003, from 10 a.m. MDST to 4 p.m. MDST. The purpose of the meeting is to review potential projects and adopt operating