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May 15, 2003

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

01-040N-5
01-040N
David Meeker

Re: Tentative Determinations on Availability of *Salmonella* Data

The National Turkey Federation (NTF) respectfully submits these comments in response to the Food Safety and Inspection Service's (FSIS) "Announcement of and Request for Comment on FSIS' Tentative Determinations on the Availability of *Salmonella* Test Results" published in the April 16, 2003 Federal Register.

NTF is the only national trade association representing the turkey industry exclusively. NTF represents nearly 100 percent of the United States turkey industry, including processors, growers, breeders, hatchery owners, and allied industry. Since our FSIS-inspected members are subject to FSIS *Salmonella* performance standard testing, we have an interest in how the data is released, both to the individual establishments and the public.

In the Announcement, FSIS identified three tentative determinations, the agency will: (1) allow the release of individual test results, (2) post aggregate sample set results on the web, and (3) update the *Salmonella* progress report quarterly.

As a general matter, NTF supports the agency's tentative determinations, especially the decision to permit an establishment to request and obtain the individual test results during the FSIS *Salmonella* sampling set. However, we do have certain suggestions and requested clarifications to the tentative determinations as discussed below.

Individual Test Results

As regards the release of individual test results, we understand the agency has traditionally withheld these results from public disclosure, even to the establishment, under exemption b (5) of the Freedom of Information Act (FOIA) as pre-decisional documents. We also understand that under the FOIA regulations, the agency is authorized to waive this exemption. 7 C.F.R § 1.19(b). Here, because of the value the

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individual test results could have to the establishment during the pendency of the sample set, the agency will waive the exemption and make the results available to anyone upon request.

However, merely because the agency *may* grant a waiver does not necessarily mean the agency *must* grant a waiver in advance of an establishment requesting such a waiver.

Obviously, as the agency noted in the Federal Register, providing the individual sample results during a *Salmonella* set may prove beneficial to an establishment. Releasing the results when the set is completed does not provide the establishment with the opportunity to make adjustments during the sample set. Releasing the results during the set provides the establishment with useable feedback on the effectiveness of its process so, if adjustments may be needed, the establishment can act, thereby increasing the likelihood of passing the sample set.

This being said, there may be situations where the establishment does not want or need the results during the sample set. Indeed, there may be times when the establishment for whatever reason does not want the public release of data before set completion. Since the agency is willing to waive the b (5) exemption because the information may be useful to the establishment, it would seem that if the establishment does not wish to have the data until the completion of the data set, the agency should not unilaterally grant a waiver.

Accordingly, we suggest the agency modify its tentative determination to waive the b (5) exemption and share individual results *only* when the establishment requests a waiver. Otherwise, the individual results would remain exempt under b (5). In other words, the information would be released pursuant to an FOIA request only if a company requests and receives the results of the sample set prior to completion. If the company does not request the information, the agency would not release the results pursuant to an FOIA request.

While we understand the legal obligations of the agency to make the test results available to the public via the FOIA once they are released to the plant, we do not necessarily agree that the public will benefit from the information. Conceptually, making *Salmonella* results available to consumers would appear to have value. CSPI contends that this would allow consumers to make informed purchasing decisions.

Nevertheless, without having all of the information pertinent to the processing of a given turkey operation's carcasses and/or ground materials, the consumer could be misled about the microbiological status of any resulting finished products. For example, raw materials from many plants producing larger, older birds (e.g., canner tom operations) will be subjected to a terminal thermal process under FSIS inspection. Knowing the *Salmonella* incidence associated with raw materials from these operations provides no value to the consumer since he or she, in all likelihood, will not be purchasing product that is still reflective of any performance standard testing results.

Posting Completed Sample Sets

On the posting of sample results on the FSIS web site, we support the tentative determination to do so on an aggregate basis. The agency has never posted individual establishments on its web site when reporting routine micro-testing. Even with the pathogen *E. coli* O157:H7, only the state is listed. We see no need to adopt a different approach for performance standards.

We do have one recommendation. We believe the posting of the aggregate results will be useful in ascertaining any potential variation by geographic location. However, to facilitate this comparison, we submit that posting the results by the 15 Districts will enable a quicker comparison than posting by 50 states. Accordingly, we suggest the posting simply be by District.

Updating Progress Report Quarterly

We support the agency's tentative determination to post the progress report quarterly. Just as the posting of the aggregate results by geographic location, this degree of detail in the data will enable the rapid identification of any seasonal variations.

Performance Standards

Although not technically a tentative determination on the release of *Salmonella* results, we appreciate the agency's clarification of how it will respond if an establishment fails a *Salmonella* performance standard. It has always been NTF's position that the use of this organism was inappropriate for a performance standard and at best, could only be used as a performance criterion, similar to generic *e. coli* in slaughter operations, which is how we understand the agency will now use the results.

Conclusion

We support the agency's action on this issue. We respectfully submit the clarifications and modifications suggested above will further serve the needs of the industry and the public in obtaining information.

As always, we appreciate the opportunity to comment on this matter and look forward to working with the agency on this and other matters of interest.

Respectfully submitted,

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