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The Food Safety People

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May 28, 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

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Craig W. Henry

[Docket No. 01-040N] Announcement of and Request for Comment on FSIS' Tentative Determinations on the Availability of *Salmonella* Test Results; 68 FR 18593; April 16, 2003

Dear Ms. Riley:

The National Food Processors Association (NFPA) is the voice of the $500 billion food processing industry on scientific and public policy issues involving food safety, food security, nutrition, technical and regulatory matters and consumer affairs. NFPA's three scientific centers, its scientists and professional staff represent food industry interests on government and regulatory affairs and provide research, technical services, education, communications and crisis management support for the association's U.S. and international members. NFPA members produce processed and packaged fruit, vegetable, and grain products, meat, poultry, and seafood products, snacks, drinks and juices, or provide supplies and services to food manufacturers.

NFPA provides the following thoughts on the above referenced *Federal Register* notice.

Individual Test Results

NFPA understands that the Agency has traditionally withheld individual *Salmonella* performance standard test results from public disclosure, even to the establishment, under exemption (b)(5) of the Freedom of Information Act (FOIA). The justification for withholding said information is that the data are deemed to be pre-decisional documents. We also understand that under the FOIA regulations, FSIS is authorized to waive this exemption [7 CFR 1.19(b)]. We now understand that due to the potential value of the individual

test results to the establishment (even in the absence of the complete sample set), the Agency has stated its intent to waive the exemption and make the results availab e to the company and to the public upon request. However, we believe that simply because the A gency *may* grant a waiver it does not mean the Agency *must* grant a waiver in the absence of an e stablishment request for such a waiver.

As noted in the *Federal Register* announcement, knowledge of indiv dual sample results prior to the completion of a *Salmonella* set potentially could benefit an estab ishment by facilitating the establishment's assessment of their process controls. Nevertheless, here may be situations where the establishment does not want or need the results during the sample set. Since the reason the Agency is willing to waive the (b)(5) exemption is becau: e the information may be useful to the establishment, it seems obvious that if the establishmer t does not want to know the results prior to completion of the data set, the Agency should not un laterally grant a waiver. The decision to request and obtain (and thereby make available to the pu blic) such results should remain with the establishment.

Accordingly, we suggest the Agency modify its tentative determinat on to waive the (b)(5) exemption and share individual results *only* when the establishment equests 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 t ıe specific company requests and receives their individual test results prior to set completion. If t ıe company does not request the information, the Agency would not release the results pursuant t an FOIA request.

While we understand the legal obligations of the Agency to make th test results available to the public via the FOIA once they are released to the plant, we do not n cessarily agree that the public will benefit from the information. The Agency notes the CSI I contention that making *Salmonella* results available to consumers may have value by allowi ıg consumers to make informed purchasing decisions. The ability of a layperson to draw c rrect conclusions from individual results or even sets of data and to use the information to l enefit public health is questionable. Without having all of the information pertinent to the processing of a given establishment's carcasses and/or ground materials, the consumer co ıld be misled about the microbiological status of any finished products. For example, raw r ıaterials from many establishments will be thermally processed under FSIS inspection. Knowing the *Salmonella* incidence associated with raw materials from these operations provi les no value to the consumer, since the finished product purchased by the consumer is no longer r flective of any performance standard testing results.

Posting Completed Sample Sets

Regarding posting sample results on the FSIS web site, we support the tentative determination to do so on an aggregate basis. The Agency has never posted results of individual establishments on its web site when reporting routine microbiological testing. Even with the pathogen *E. coli* O157:H7, only the state within which the establishment is located is listed. We see no need for the Agency to adopt a different approach for *Salmonella* performance standards. However, we believe the posting of aggregate results will be useful in ascertaining any potential variation by geographic location. To facilitate this comparison, we recommend posting by District, since posting the results by the fifteen Districts will enable a quicker comparison than posting by fifty states.

Updating Progress Report Quarterly

We support the Agency's tentative determination to post progress reports quarterly. Just as with 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

It has always been our position that the use of *Salmonella* is inappropriate for a performance standard and at best, should only be used as a performance guideline, similar to generic *E. coli* in slaughter operations. By allowing establishments to obtain interim results the performance standards can serve to guide plant actions in conjunction with additional process control data on hand. Similarly the Agency should use the results to guide Agency actions in concert with other inspectional information such as effectiveness of SSOP implementation.

We appreciate this opportunity to comment and are available to meet with you to discuss our views on the points raised herein at your convenience.

Sincerely,

Craig W. Henry, PhD
Vice-President, Food Safety Programs