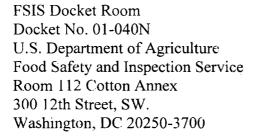


May 28, 2003



01-040N-6 01-040N Craig W. Henry

NATIONAL

FOOD

PROCESSORS

Association

[Docket No. 01-040N] Announcement of aid 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, an I seafood products, snacks, drinks and juices, or provide supplies and services to food manufacturers.

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

Individual Test Results

NFPA understands that the Agency has traditionally vithheld individual Salmonella performance standard test results from pt blic disclosure, even to the establishment, under exemption (b)(5) of the Free dom of Information Act (FOIA). The justification for withholding said information is that the data are deerned to be pre-decisional documents. We also un lerstand 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

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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 available to the company and to the public upon request. However, we believe that simply because the f gency may grant a waiver it does not mean the Agency must grant a waiver in the absence of an establishment request for such a waiver.

As noted in the *Federal Register* announcement, knowledge of individual 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 because the information may be useful to the establishment, it seems obvious that if the establishment 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 public) 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 the specific company requests and receives their individual test results prior to set 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 not 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 allowing consumers to make informed purchasing decisions. The ability of a layperson to draw correct conclusions from individual results or even sets of data and to use the information to lenefit 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 could be misled about the microbiological status of any finished products. For example, raw reaterials from many establishments will be thermally processed under FSIS inspection. Chowing the Salmonella incidence associated with raw materials from these operations provides no value to the consumer, since the finished product purchased by the consumer is no longer reflective of any performance standard testing results.

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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* per formance 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 mee with you to discuss our views on the points raised herein at your convenience.

Sincerely.

Craig W. Henry, PhD

Vice-President, Food Safety Programs