



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Flanigan Square, 547 River Street, Troy, New York 12180-2216

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

May 8, 2006

Docket Clerk  
U.S. Department of Agriculture  
Food Safety and Inspection Service  
300 12<sup>th</sup> Street, SW, Room 102 Cotton Annex  
Washington, DC 20250

Re: Docket Number 04-006P,  
Proposed 9 CFR 390.10

Dear Docket Clerk:

While the proposed 9 CFR Part 390.10, Availability of Lists of Retail Consignees during Meat or Poultry Recalls, is a positive step forward in ensuring that the public is informed and protected during a recall, the fact that only final retail consignees will be identified may hinder efforts to protect public health.

The USDA policy that considers distribution lists confidential proprietary information and the proposed Section 390.10 excluding all facilities other than the final retail consignee from being made public, hinders our foodborne illness investigations and public health protection efforts. In order for State agencies to work with local health departments to ensure that as much recalled product as possible is returned, State agencies and local health departments must be made aware of all establishments that have produced and received the recalled product. This includes restaurants and institutions such as hospitals and prisons. Since the Freedom of Information Law in New York State would allow the names of all establishments involved in a recall to be made public, New York State agencies are deemed ineligible to obtain the names of these establishments from the USDA. Our sister agency, the New York State Department of Agriculture and Markets, has conducted numerous recalls and it is our understanding that they have generally been required to obtain distribution lists from the companies involved instead of the USDA. This duplication of efforts hinders investigations and jeopardizes the health of the public.

Difficulty obtaining the lists of all establishments involved in voluntary recalls would be of significant concern during an avian influenza outbreak. As 9 CFR 390 is written, the New York State Department of Health would be unable to obtain names and locations of the poultry farms where workers contracted the illness and the distributors that may have received infected poultry.

There is also some concern over the wording of subdivision (b) of the proposed Section 390.10. As written, it is unclear whether the location of the consignee that will be posted on the USDA web page will be the actual individual store that received the product or a business office address. We are requesting that the regulation be clarified to state that the term "location" refers to the address of the specific establishment that received the product.

The opportunity to comment on the proposed regulation is appreciated. The New York State Department of Health believes that complete disclosure of all facilities involved in a voluntary recall is vital to protecting the health of the public. If you would like to discuss this further, please contact Barbara Gerzonich at (518) 402-7600.

Sincerely,

Michael J. Cambridge  
Director  
Bureau of Community Environmental Health  
and Food Protection

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cc: Mr. Tramontano  
Dr. Morse  
Mr. Svenson  
Mr. Bills/Ms. Jones Rafferty  
Mr. Sackett  
Ms. Gerzonich  
Ms. Linehan-OGA