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May 5, 2006

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

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Re: Docket No. 04-006F
Federal Register Tuesday, March 7, 2006
Vol. 71, No. 44
Pages 11326-11328

Gentlemen:

On behalf of National Meat Association (NMA) members we respectfully submit the following comments in response to the Food Safety Inspection Service request regarding the *Federal Register* Proposed Rule entitled, "Availability of Lists of Retail consignees During Meat or Poultry Product Recalls".

NMA, organized in 1946, represents the interest of meat packers and processors throughout the United States. Our general membership, which consists of over 300, has always supported efforts to improve the effectiveness of recalls and to provide consumers with all information necessary to identify and remove potentially dangerous product from their refrigerator and pantries. Unfortunately, FSIS has not presented any evidence that the release of confidential retail customer lists will achieve these objectives, or that the potential value of this information would outweigh the competitive harm that will be caused to the industry by its release. Indeed, rather than making recalls more efficient, it is highly likely that the release of this information will cause more confusion and uncertainty with consumers, lead consumers to focus less on important product identification information and more on potentially incorrect and misleading information, and result in consumers returning more product that is not covered by the recall.

When there is a recall of potentially dangerous product, the main objective of both industry and the agency is to provide consumers with timely and reliable information so that they can identify affected product and dispose of it prior to consumption. This objective has been achieved through the immediate dissemination of product identification information in Agency press releases and Recall Notification Reports provided to localities in which the product was sold. The agency has acknowledged in its proposed rule and other public records that this method has been effective.

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Publishing a list of retail consignees on FSIS' website weeks or sometimes months after a recall would not aid consumers in identifying and disposing of affected product. First, posting information on a web-site for consumers presupposes the consumers will know to check a web-site for this information and that consumers either purchase all their items from only one location or keep sales receipts of all purchases to afford them the ability to trace back products to a specific point of purchase. Second, even if consumers know to check the agency's website or know where they purchased specific product, releasing a list of retail customers could distract consumers from the most important information available to them, the product identification information. In fact, it is conceivable that some consumers will wait until the retail consignee list comes out before deciding to check their refrigerators or pantries. If a consumer later forgets to check the website or the retail consignee list is inaccurate, the consumer could eat potentially hazardous product. Third, the agency assumes that all information on its website will be accurate and complete. According to the proposal, the agency will post the names of retail consignees on its website as the agency collects this information pursuant to its recall effectiveness checks. Unfortunately, it is not uncommon for the agency to have incomplete or inaccurate lists of retail consignees from their effectiveness checks. Intermediate distribution records could be incomplete or affected products could find their way to other retail customers that are not identified on distributor records. The failure to include a particular retail consignee on the agency's website or the failure to post the name of a particular retail consignee on the website in a timely manner could cause a false sense of security, resulting in a person consuming potentially hazardous product.

Faced with these real concerns, the agency does not provide any evidence that its proposal would benefit public safety, and does not provide any explanation whatsoever for changing its position that retail consignees constitutes confidential commercial information. On April 24, 2002 FSIS published a final rule, which enabled FSIS to share confidential lists with State and other federal agencies for the purpose of aiding in the recall verification process by enlisting their assistance in recall effectiveness checks. However, FSIS has long recognized that this distribution list information is confidential commercial information valuable to a firm and to its competitors and was protected from mandatory public disclosure by exemption 4 of the FOIA (5U.S.C. 552(b)(4)). Therefore, FSIS does not release distributor lists to States or other federal agencies unless they agree to keep the information confidential.

FSIS does not offer any explanation of how information once regarded as confidential commercial information and protected from mandatory public by exemption 4 of the FOIA is no longer valuable to the firm or its competitors. On the contrary the publication

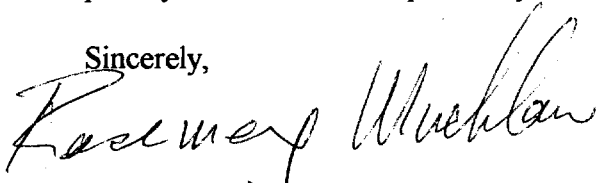
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of this information would be extremely advantageous to a firm's competitors. A competitor would have the ability to identify specific retail locations where products have been removed and then offer their products as an immediate substitute thus placing firms undergoing a voluntary recall at risk of losing their customer base. The proposed change could be devastatingly destructive, especially to small firms who would be subjected to competitive piracy by web-smart larger firms accessing their most important business asset-their customer list.

In consideration of the aforementioned comments, we request that the proposed rule be abandoned. In the alternative, we request that it be reissued for review and comment under the condition that it also include an Economic Impact study assessing the potential for serious economic loss due a competitors accessing confidential customer information. In addition, we request that FSIS present supporting evidence that would substantiate claims of how publicizing confidential customer information lists will expedite recalls beyond present day capabilities.

The NMA appreciates this opportunity to comment on Food Safety and Inspection Service proposed rule to make available a list of retail consignees during meat and poultry recalls. NMA hopes that you will give our comments due consideration.

Sincerely,



Rosemary Musklow
Executive Director
National Meat Association



Ken Mastracchio
Associate Director
National Meat Association