



President

Marion F. Aller
FL Dept. of Agriculture and
Consumer Services
3125 Conner Blvd.
Room 181 MS C18
Tallahassee, FL 32399-1650
(850)488-0295
(850)488-7946 FAX
allerm1@doacs.state.fl.us

President-Elect

Charlene W. Bruce
MS Dept. of Health
570 E Woodrow Wilson
P.O. Box 1700
Jackson, MS 39215-1700
(601)576-7689
(601)576-7632 FAX
cbruce@msdh.state.ms.us

Vice-President

Steve Steingart
Allegheny Co. Health Dept.
3901 Penn Ave.
Pittsburgh, PA 15224
(412)578-7935
(412)578-8190 FAX
ssteingart@achd.net

Secretary-Treasurer

Steve Steinhoff
WI Dept. of Agriculture
2811 Agriculture Dr., Box 8911
Madison, WI 53708
(608)224-4701
(608)224-4710 FAX
steve.steinhoff@datcp.state.wi.us

Director of Public Policy

J. Joseph Corby
NY Dept of Agriculture & Markets
10 B Airline Drive
Albany, NY 12235
(518) 457-4492
(518) 485-8986 FAX
Joe.Corby@agmkt.state.ny.us

Executive Director

Denise C. Rooney
Association of Food and Drug
Officials
2550 Kingston Road
Suite 311
York, PA 17402
(717) 757-2888
(717) 755-8089 FAX
drooney@afdo.org

Association of Food and Drug Officials

2550 Kingston Road, Suite 311 York, PA 17402
Telephone (717) 757-2888 Fax (717) 755-8089
E-Mail: afdo@afdo.org Internet: www.afdo.org

THE ASSOCIATION OF FOOD & DRUG OFFICIALS [AFDO]

OFFICIAL COMMENTS TO:

United States Department of Agriculture; Food Safety & Inspection Service [FSIS]

AND

United States Department of Health and Human Services; Food & Drug
Administration [FDA]

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[Docket No. 05-013N]

USDA and HHS Agencies Work Together to Examine the Jurisdiction of Certain Food Categories

On behalf of the Association of Food & Drug Officials [AFDO], it is my pleasure to offer the organization's comments on FSIS' and FDA's plans to address the longstanding confusion over which agency has jurisdiction when certain food products contain meat or poultry. AFDO represents state and local food safety regulatory officials and is a close working partner to both FSIS and FDA on food safety and defense matters. Furthermore, AFDO has long supported the concept of a nationally integrated food safety system and has promoted numerous projects, in place today, that advance this concept. We believe the examination beginning here today into the jurisdiction of certain food categories can further strengthen the regulatory process, will better employ limited available resources, and will resolve a number of longstanding criticisms of the Federal food safety agencies. AFDO strongly supports this process and the approach taken by the FSIS/FDA working group for the following reasons:

1] **It will strengthen our national food safety system.** As a result of our close working relationships with FSIS and FDA, it is our belief that food safety agencies at all levels must operate in concert to protect public health. Problems which exist for the Federal agencies are also problems for the state and local agencies. Clarifying and rationalizing what Federal agency has jurisdiction over foods like pizza and sandwiches will result in more efficient and effective government regulation, benefiting all parties.

2] **It permits a risk-based allocation of regulatory resources.** We believe this effort is a logical cost-saving step for better applying inspection resources to regulated industries. It is also a much improved way for addressing inspection jurisdictions for lower-risk vs. higher-risk food products.

3] **It is a logical and more easily understandable approach to distinguishing products.** We fully support the FSIS/FDA workgroup's rationale for determining what agency shall be awarded jurisdiction. Food products that primarily contain meat and poultry ingredients should be covered by resident type of inspection under FSIS, while food products that contain meat and poultry ingredients for accentuating flavor only should be assigned to FDA. This rationale is best illustrated, in our opinion, with sandwiches which pose a potential *Listeria monocytogenes* hazard to consumers, whether or not the sandwich is closed- or open-faced.

While AFDO recognizes the need for and importance of the jurisdictional examination, we note that the changes being considered will have an impact on state and local food safety programs. We urge that these impacts be considered during the decision-making process.

1] It is likely that some establishments that would be affected by the change are currently licensed and inspected by state and/or local regulatory agencies. Should these establishments become Federally-inspected plants under FSIS, would state laws be preempted and state programs lose licensing fees? What might FSIS do to ameliorate this impact?

2] AFDO has long supported the use of HACCP by all food manufacturers and wonders what will happen to current FSIS establishments operating under a HACCP plan that are then transferred to FDA jurisdiction where this requirement does not exist. It would seem inappropriate that a HACCP system, which has been mandated to and put into effect by a firm, might no longer be required. AFDO requests clarification of this matter.

3] It would follow that rule changes for firms that are placed under a new Federal jurisdiction will be impacted as well. Establishments complying with state-required date coding, record-keeping or processing schedules different from those required by FSIS, would have to make substantial changes.

4] A number of affected firms may be currently inspected by state authorities under FDA contracts. Transferring these firms to FSIS jurisdiction will impact such contracts.

5] A number of states have taken major enforcement actions due to *Listeria monocytogenes* contamination against sandwich manufacturers currently under FDA's jurisdiction. These state actions include food seizures or embargoes, recalls, and license revocations. State programs report that some of these actions have led to requirements for "hold and test" programs and environmental plant testing. The potential for *Listeria* contamination in sandwich manufacturing facilities is of great concern to state and local food safety programs, and we believe the more intensive, resident-type inspection program of FSIS is warranted for such products. AFDO does ask FSIS to review with state programs any sandwich manufacturer under current state or local government authority where *Listeria monocytogenes* problems have existed.

This initiative could be an opportunity to look at new cooperative approaches to regulating food establishments subject to multiple jurisdictions. Food establishments where meat or poultry and non-meat or poultry products are produced in the same plant have always presented an awkward situation for regulators. Many of these plants are high-risk types such as low-acid canned food manufacturers, acidified food plants, and processors that cure, salt, or smoke various types of food products. Goals might be to prevent duplication of efforts and minimize the number of government food safety agencies with which small businesses must contend. At a minimum, where the states are not preempted entirely and continue to have a role in regulating multiple-product manufacturing establishments, the Federal agencies should provide a mechanism for consulting with the states on the coordination of Federal and state regulatory activities, including compliance efforts with retail food establishments.

AFDO is pleased to offer these comments to our Federal partners and applaud any decision that will result in a better utilization, coordination, and integration of the limited, yet very critical resources devoted to food safety.

A handwritten signature in cursive script that reads "Marion F. Aller".

Marion Aller; President

Association of Food & Drug Officials