



NATIONAL CONSUMERS LEAGUE

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FSIS Docket Clerk
U.S. Department of Agriculture
Room 102, Cotton Annex
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Washington, D.C. 20250-3700

98-027R-15
98-027R
Linda F. Golodner

Re: Docket No. 98-027R

The National Consumers League (NCL), the nation's oldest nonprofit consumer advocacy organization, and fellow Safe Food Coalition members Center for Science in the Public Interest, Consumer Federation of America are writing to urge issuance of a final rule on Advanced Meat Recovery systems. Since its inception, NCL has been dedicated to ensuring the safety and purity of America's food supply. From the first food and drug laws, including the Meat Inspection Act of 1906, NCL has addressed safety concerns and economic adulteration of meat.

NCL believes that much AMR product on the market contains excessive levels of marrow and other bone constituents. This product, produced by "bone press" AMR systems operated at high pressure and dwell time settings, is closer to "mechanically separated" meat than to hand-deboned meat. As such, it does not meet the regulatory definition of "meat" and should not be labeled as "meat." Using meat industry estimates of yield gains of approximately \$200 million per year associated with use of bone-press AMR machines, America's consumers have been overcharged (i.e., paid meat prices for marrow) nearly \$1 billion since the current AMR regulation was put in place in 1995.

FSIS has confirmed that much AMR product is not "meat." First, an FSIS field survey of meat processing plants in 1995 found that bones exiting AMR systems were often crushed or pulverized in violation of FSIS regulations. Second, FSIS' 1996 survey, which analyzed and compared samples of AMR product and hand-deboned meat, found that most AMR product contained significant levels of marrow as well as some central nervous system tissue.

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The current rulemaking is FSIS' response to these findings. In the proposed rule and throughout the long history of this controversy, FSIS has stated unequivocally that marrow and other bone constituents are not expected ingredients of meat. To be labeled as "meat," product must be comparable to hand-deboned meat. This means that at most only negligible amounts of marrow may be present in the product. Spinal cord should never be allowed in the product. This is more than an economic adulteration issue; it is a food safety issue as well. Neck and backbones—the bones most likely to contain spinal cord—are usually processed by bone press machines. If an animal is infected with Bovine Spongiform Encephalopathy (BSE), its spinal cord and brain are highly infectious and should not be consumed by humans. Although there are no reported cases of BSE in the United States, we are concerned. To ensure that AMR product only has negligible levels of marrow, FSIS has proposed a standard for "excess" iron, using iron as a marker for marrow. NCL supports this approach.

1. Iron Methodology

FSIS has now presented research by the Agricultural Research Service (ARS) suggesting that the methodology used by FSIS to set the excess iron standard in the proposed rule may have been flawed. The ARS re-tested 188 samples taken in FSIS' 1996 survey using a dry ash digestion procedure found iron levels approximately double those found by FSIS using a hydrochloric acid wet ash digestion procedure. This means that the methodology used by FSIS to measure iron in AMR and hand-deboned samples, and to arrive at the standard for excess iron in the proposed rule, understates iron content.

NCL continues to strongly support the proposed rule, including the proposed excess iron standard. However, given the large discrepancy in iron levels depending upon which method is used, NCL believes that the proposed rule should require a consistent methodology. It does not matter which method a plant uses, so long as the same methodology that is used to determine iron in hand-derived meat (i.e., the multiplier in the proposed formula for calculating excess iron) is also used for compliance purposes in the plant. It is essential that plants not be able to manipulate the results by selecting a methodology that understates the iron content of their product. The comparison must be "apples to apples"-- the same methodology applied to meat from the same anatomical location (e.g., dry ash digestion procedure used on back and/or neck bones).

In NCL's view, this leaves at least two alternatives. FSIS could mandate use of a specific methodology. Since the dry ash digestion procedure used by ARS appears to produce more accurate results, this would seem the logical candidate. A second alternative would be for FSIS to permit plants to select which method they wish to use but require that the results be adjusted as appropriate (e.g., the results of tests using the hydrochloric acid digestion procedure could be multiplied by 2.12). Again, NCL does not think it matters which methodology is used as long as the same method is used consistently in calculating the multiplier used in the excess iron formula and in compliance testing.

Whichever approach is chosen, the standard for excess iron must ensure that AMR product is equivalent to hand-deboned meat and has only negligible amounts of marrow. This

means that excess iron permitted in AMR product should be comparable to excess iron levels in hand-deboned meat, allowing only a small variation (i.e., not more than ten percent).

NCL would also like to reiterate the absolute need for strong enforcement. Processors should be required to test for iron both for validation and verification purposes. FSIS should take weekly samples for enforcement purposes. Product failing the performance standard could be used, provided it is labeled as “mechanically separated (species)”; non-complying product in commerce must be recalled.

2. Worker Safety and Economic Impact

FSIS has also requested comments on two papers submitted by a meat industry group. These papers purport to analyze the economic impact of the proposed rule and its implications for worker safety. These papers claim that, if the proposed rule is adopted, meat processors will be forced to scrap AMR technology entirely and return to using whizard knives to harvest meat from neck and back bones. NCL believes these papers present a false choice between the status quo and a return to whizard knives, ignoring several other viable options available to meat processors.

The assumption that the proposed rule would force processors to completely abandon AMR technology is unsupported. According to the economic analysis, “[t]he analysis presented in this study is based upon the assumption that implementation of the proposed regulation would end use of AMR systems since they cannot be adjusted to meet the proposed iron and calcium content levels.”¹ It goes on to state: “The further assumption is that processing plants would return to the previously widely-used system of auto-knives.”² Yet, neither assumption is explained or supported by any evidence whatsoever. The paper on worker safety makes the same assumptions: “Industry sources indicate that the AMR systems cannot meet the proposed standards and operate economically. These same industry sources indicate that they will return to vibrating hand-held knives, at least in large part, to remove meat from the bone.”³ These industry sources are not even identified, and their statements are not supported or explained.

These assumptions, which serve as the starting point for both papers, are at best doubtful. NCL finds it difficult to believe that existing AMR systems cannot be operated in compliance with the proposed rule by reducing pressure and dwell time settings on the machines. FSIS found that more than 60 percent of the AMR samples in the 1996 survey would have been in compliance with the proposed rule.⁴ If processors adjust pressure and dwell time settings, they

¹Sparks Companies, Inc., *Advanced Meat Recovery Systems - An Economic Analysis of Proposed USDA Regulations* (July 1999), p. 7.

²*Id.*

³*Worker Safety Issues Related to Advanced Meat Recovery*, p. 3.

⁴63 *Federal Register* at 17963.

should be able to increase the percentage of AMR product in compliance. Alternatively, product that fails the performance standard can be used and labeled as “mechanically separated (species).”

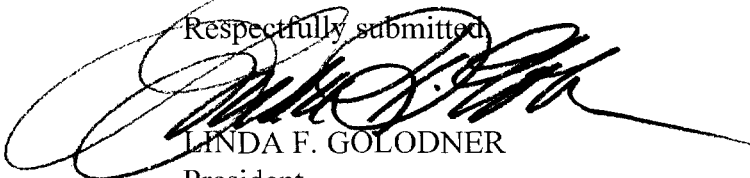
The assumption that, if the proposed rule became law, all processors using AMR systems would completely abandon AMR technology and switch back to hand-held whizard knives is also questionable. There would be other more appealing options available to meat processors, including: (i) continuing to use existing AMR systems but labeling AMR product not in compliance with the proposed rule “mechanically separated” beef or pork; or (ii) replacing existing AMR systems with new AMR equipment that produces product in compliance with the proposed rule. Regarding the first option, the poultry industry has been marketing “mechanically separated” chicken and turkey successfully for the past two years, and the meat industry could do the same.

Given the highly questionable assumptions on which they are based, and the lack of any data to support those assumptions, the two industry papers are of little value and should be given little weight by FSIS.

NCL is aware that the proposed rule would reduce yield from AMR systems and would thereby reduce the profits of meat processors that use AMR systems. However, this economic cost primarily represents a reduction in marrow being sold as “meat.” This would truly be a benefit to consumers who have been paying meat prices for marrow since 1995. NCL has a strong commitment to worker safety, and has no desire to see meat processors abandon AMR technology. However, adulterated product must not be allowed to reach consumers in the marketplace. NCL believes that the proposed rule can be implemented without the dire consequences predicted by the industry group that produced these papers.

Finally, NCL hopes that this will be the last time it will draft comments on this issue. The time has come to end the AMR charade and for FSIS to issue a final rule which, like the mechanically separated poultry rule, forces processors to either produce a product equivalent to hand-deboned meat or label it as mechanically separated meat.

Respectfully submitted,



LINDA F. GOLODNER
President

On behalf of:

Center for Science in the Public Interest
Consumer Federation of America