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FSIS Docket Clerk
Docket #99-029P
USDA – FSIS
Room 102 Cotton Annex
300 12th Street SW
Washington, DC 20250-3700

99-029P
99-029P-14
Bernard F. Shire

RE: Recall Information With State and Other Federal Government Agencies

The American Association of Meat Processors (AAMP) is pleased to provide the following comments to the Food Safety and Inspection Service in response to the proposed rule that would allow FSIS to share an establishment's confidential commercial information with other federal and state agencies in a recall situation.

AAMP is an international trade association representing meat and poultry processors, slaughterers, caterers, wholesalers, retailers, home food service companies, as well as consultants and suppliers to the meat and poultry industry. Our members are located in all 50 states, Canada and overseas. Most of the Association's members are very small, small and medium-sized businesses.

Our Association and our members are dedicated and committed to producing products that are safe, wholesome and properly labeled for customers for two reasons: (1) It is the right thing to do; (2) It makes sense from a business standpoint to produce products that are good for businesses' customers.

AAMP and its members are committed to providing such products. In situations where a product has been shipped in commerce and then must be removed because of contamination or other reasons, we think it is very important that this be done as quickly and efficiently as possible. For that reason, AAMP supports the current system of voluntary recalls, where the Agency and the establishment work together to remove from commerce and get back as much of the affected product as possible.

For that reason and because of the expressed goals of this proposal, AAMP does not have a major concern about the overall intent of FSIS to improve recalls by appropriately sharing information with other federal and state agencies.

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Our Association does, however, have some thoughts on how this should be done, so that the interests of all parties involved are protected.

If FSIS is able to share information about certain confidential information, such as sales lists and distributor information, with other government agencies involved in a recall, that could facilitate locating and retrieving of product. It could also bring a recall to completion, rather than allowing a recall to remain "open" or "unfinished" for a long period of time, for no reason.

But there need to be some safeguards, so that information that is both important to a company's business and confidential does not get into the hands of organizations or people that would adversely affect the company's business activities.

Safeguards Suggested:

(1) We support the decision of the National Advisory Committee on Meat and Poultry Inspection (NACMPI) to recommend to the Secretary of Agriculture that FSIS enter into cooperative agreements or Memorandums of Understanding (MOUs) with state agencies, or other federal agencies. **The agreements or MOU's should be limited to state agencies and federal agencies that will assist in recall verification activities.** There should be a limitation on the agencies eligible to receive this information from the Agency. FSIS should make the recall information available only to government agencies that will actually be involved with FSIS with either removing or verifying the removal of products, in geographical areas where the product is known to have been distributed. There should be restrictions on how far and to whom the information can be spread. If other agencies are not playing an important verification role in a recall, for example, there is no need for them to get the information. **FSIS should also provide notice of adequate penalties for improper disclosure of proprietary information within the agreement or the MOU.**

(2) **Agreements or MOUs should at the same time include provisions that state agencies share information they have about recall efforts with FSIS.**

The disclosure should go in both directions.

(3) **The final regulation adopted by the Agency should outline specifically the type of confidential information that will be shared, rather than authorizing the sharing of information in general terms.** The purpose of sharing the information is to help FSIS recall staff make sure that contaminated, unwholesome or mislabeled products are removed from the marketplace. The information to be shared should be about distribution, so that representatives of state departments of health or agriculture, or other federal agencies, are able to find where the affected product is located, and decide if the product has been removed from the marketplace. **The rule should be changed, to reflect specific information such as "confidential customer sales and**

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distribution information,” rather than the general “confidential commercial information.”

(4) The Agency should declare that it will always notify the company what information is being provided to these other government organizations, as required in Department regulations 7CFR1.11.

(5) The language concerning recall situations should be narrowed to those involving a health hazard situation where there is a reasonable probability that the use of the product will cause serious health consequences. The phrase “determination that disclosure would be in the interest of public health” is extremely general, and could lead to situations that cannot justify the release of confidential information. For example, justification would exist in the case of Class 1 recalls, where there is a high health risk. But we do not think it would exist in the case of Class 2 and 3 recalls, where there is low or no health risk.

(6) Accountability by FSIS, state agencies and other federal agencies should be implemented if the confidential information is not released appropriately. If it is given to people or agencies that are not authorized to have it, or if unauthorized people/agencies get the information, the agencies need to be penalized. FSIS and the other agencies, state or federal, must bear responsibility for both the release of this information and consequences related to what happens to the company as a result of inappropriate release.

(7) We have some concerns about whether information released as a result of this proposed rule could hurt the marketing ability of small establishments, by raising the danger of disclosure of confidential sales lists to competing establishments and businesses. This concern needs to be studied further by the Agency and addressed. The rule as adopted must ensure that this would not happen.

AAMP appreciates the opportunity to comment on this USDA-FSIS proposed rule. As always, we look forward to continue working with USDA-FSIS to improve the regulatory process and make sure the products our members sell are as safe for the public to consume as possible.

Sincerely,



Bernard F. Shire, Director
Legislative & Regulatory Affairs

cc: Michael Eickman, AAMP President