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November 17, 2000

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FSIS Docket Clerk
Food Safety and Inspection Service
United States Department of Agriculture
Room 102 Cotton Annex Building
300 12th Street SW
Washington D.C. 20250-3700

99-029P
99-029P-7
Ellis W. Brunton
Michael J. Gregory

RE: FSIS Docket No. 99-029P Sharing Recall Information with State and Other Federal Government Agencies

To whom it may concern:

Tyson Foods, Inc. is proud to be the nations largest poultry producer. With facilities nationwide, we take pride in the Tyson name and strive to exceed customer and regulatory expectations. We appreciate the opportunity to comment on the above-captioned docket.

Tyson Foods, Inc. is committed to providing safe and wholesome food to consumers. We support efforts by the Food Safety and Inspection Service (FSIS or the agency) and other federal and state agencies to improve the timeliness and effectiveness of removing potentially harmful products from food distribution channels. Although Tyson agrees in concept with FSIS's proposal to allow the agency to share "confidential commercial information" with other state and federal agencies during a recall, we are concerned that the proposal needs strengthening and clarification. In that regard, we recommend that the agency consider revisions to reflect the following points so as to enhance the proposal as written.

Limit Sharing of Data to Class I Recalls

FSIS states that sharing "confidential company information" with other federal agencies "is necessary to facilitate cooperation in regulatory activities and will contribute to improved public health protection." Sharing the aforementioned information with other state and federal agencies should be permitted only when there is a *reasonable probability* that the use of the product will cause a public health risk. According to the agency's definitions, Class II recalls have a *remote* probability of causing adverse health

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consequences and Class III recalls *will not cause* adverse health consequences.¹ Involvement of multiple state and federal agencies under these circumstances is unwarranted and could undermine consumer trust in safe products. Tyson recommends that sharing “confidential company information” should be limited to Class I recalls where there is a reasonable probability that the use of the product will cause serious, adverse health consequences.

FSIS Should Specify What “Confidential Commercial Information” May Be Shared With Federal and State Agencies.

The final rule should specify what “confidential commercial information” the agency will consider sharing with state and federal agencies (*i.e.* distribution lists, customer lists, *etc.*) during a recall. Further, the agency should restrict sharing “confidential commercial information” to that which is relevant to individual states and directly assists agencies in tracking and verifying product removal. For example, information on a recalled product’s distributed exclusively in Oregon would not enhance public health in the state of Virginia if the information were to be shared with Virginia. However, distribution information within the state of Oregon could be relevant to the public health of Oregon’s citizens. FSIS should determine what information would be geographically relevant to state agencies and has the greatest potential to assist the state in verifying that food products have been removed from commerce in that state.

FSIS Should Be Conscientious In Disseminating “Confidential Commercial Information”

“Confidential commercial information” should only be shared with those state and federal agencies that are responsible for enforcing food safety statutes and that can assist FSIS in verifying the removal from commerce of adulterated or misbranded products. “Confidential commercial information” should not be shared with state or federal agencies that are interested in the issue, but do not play a role in implementing or enforcing food safety mandates.

In addition, state and federal agencies that have not maintained confidential control of the information entrusted to them should not receive “Confidential commercial information” in the future without better assurances regarding the control of the information.

¹ United States Dept. of Agriculture. “Recall of Meat and Poultry Products” FSIS Directive 8080.1 (Rev 3):2

**“Confidential Commercial Information” Should Not Be Unrestricted
Without A Direct Request**

“Confidential commercial information” should not be released to any state that does not have a confidentiality statute that protects the state from releasing “confidential commercial information” to the public. In addition, the agency should require state and federal agencies to submit a written request to FSIS for “confidential commercial information.” The request should be accompanied by an explanation of the state or federal agency’s need for the information and its relevance to the recall’s progression.

FSIS states that it will disseminate “confidential commercial information” provided that “the State government officials have provided a written statement establishing authority to protect confidential commercial information from public disclosure and a written commitment not to disclose such information without the submitter’s written permission or written confirmation from FSIS that the information is no longer confidential.”² A one time agreement by a state government to allow blanket sharing of “confidential commercial information” during recalls is only acceptable if the state has protective laws in place that disallow sharing such information with the public.

Lastly, Tyson Foods, Inc. requests that when FSIS receives a request for “confidential commercial information” belonging to a plant, that the agency notifies the establishment immediately, as provided by 7 C.F.R. §1.11.

Conclusion

Tyson appreciates the opportunity to submit comments regarding FSIS’s proposed rule, “Sharing Recall Information with State and Other Federal Government Agencies.” We appreciate the agency’s continued commitment to increasing food safety and maximizing the efficiency with which we achieve it. We look forward to working with you on this and other food safety issues in the future.

Sincerely,



Dr. Ellis W. Brunton

Sr. Vice President, Science and Regulatory Affairs



Michael J. Gregory

Director, Regulatory Compliance

² 65 Fed. Reg. 56504, (September 19, 2000).