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In Triplicate

99-055R-1
99-055R
Deven L. Scott

FSIS Docket Clerk, Docket No. 99-055R
U.S. Department of Agriculture
Food Safety and Inspection Service
Room 102, Cotton Annex
300 12th Street SW
Washington, DC 20250-3700

RE: Docket No. 99-055R - Comments to the Interim final interpretative rule pertaining to Exemption of Retail Operations from Inspection Requirements:

The North American Meat Processors Association (NAMP) is a non-profit trade association whose membership is primarily comprised of companies who process and distribute meats, poultry, seafood, game and other foodstuffs to the foodservice industry. NAMP was an active participant in the original deliberations that established the dollar limitation criteria for retail exemption after the passage of the Wholesome Meat Act. We recognized and accepted the rationale that isolated or distant food-service establishments, due to delivery schedules or weather, might on occasion be unable to obtain a necessary meat and poultry item(s) and could be prevented from obtaining product due to the "normal retail quantity" limitation. Since the late 1960's, however, the advances in refrigerated storage coupled with the growth of the foodservice industry has eliminated the need for this safety net which was not contemplated nor provided for in the original Act.

For a number of years NAMP has asked the agency to eliminate the retail exemption. We have done so for a number of reasons. First, as noted above, the exemption is no longer needed as the reasons for which it was established no longer exist. Secondly, FSIS has had neither the desire nor the resources to police it, and has relied on complaints from the industry before investigating abuses. Then, the agency relies on good faith compliance and in few cases pursued the matter further, and now finds itself an accomplice in violation due to the enormous sales made by warehouse clubs and other large retail operations. Thirdly, a number of years ago, FSIS commissioned a Research Triangle Institute (RTI) study report which noted the substantial food safety dangers inherent in the retail exemption. This report was never officially acknowledged nor acted upon.

Retail Exemption Comments

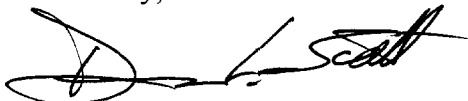
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Now, before addressing these same concerns that were raised by the National Advisory Committee on Meat and Poultry Inspection, the agency in what appears to be an act of self protection is making an end run around the problem by opting to eliminate from the dollar limitation requirement any "pass through" products that are sold to hotels, restaurants, and similar foodservice establishments. The agency naively suggests that the "pass through" pertains to such items "as properly labeled packages of bacon and cans of poultry stew" and ignores the fact that entire cartons of fresh or frozen meat and poultry weighing sixty or so pounds and valued perhaps at \$7.00 per pound or more would also meet its new criteria. Industry complaints have targeted exactly such sales which could easily reach several thousands of dollars per week, and hundreds of thousands of dollars per year. In fact, the rule suggests to retailers that they may become non-inspected distributors by searching out hotels and restaurants who may wish to have new sources of supply. Rather than protecting the public, as it now does by applying sanitation SSOP's and HACCP criteria to inspected establishments who also "pass through" merchandise, the agency has opened a pandora's box of problems. What has happened to the agency's concerns for receiving practices, storage requirements, temperature control, and transportation? Do you intend to let a retailer deliver product from the trunk of a car or unrefrigerated vehicle? If product is properly labeled within a carton, may a retailer "break bulk"? Do you intend to let retailers supply inspected establishments? May the hotel or restaurant also become a "pass through" seller? Will you allow retailers to take returns from their customers? If a food safety episode occurs that is traced back to a retailer, will they or the inspected establishment whose mark is on the product be held liable?

We ask further how do you intend to assure compliance with the "pass through" requirement? Do you intend to scrutinize invoices alone, or will you monitor both retailers and their wholesale customers to assure that the products sold were intact and not further processed? Will you again respond only to complaints or will you schedule ongoing site visits to retailers as well as their wholesale customers to guarantee compliance? Considering the lack of oversight in the present compliance system, it is obvious that your new approach opens the door to even greater opportunities to subvert inspection requirements, to undermine food safety protections, and to jeopardize public health as was pointed out in the research on this very subject conducted by the RTI, and noted earlier in these comments.

Most importantly, what's the big rush? Why do you need this interim step? Why can't you get to the core issue and make a decision and promulgate a rule on eliminating the retail and all other exemptions as has been recommended and requested of you. We respectfully request that you reconsider this interim final interpretative rule and withdraw it pending your submission of a proposed rule that addresses the entire exemption matter. To do otherwise will create problems that discredit both the agency and the use of meat and poultry products in the eyes of consumers.

Sincerely,



Deven L. Scott
Executive Vice President